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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1951

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

A. HEWSON MICHIE, S. G. ALRICH, W. M. WILLSON
AND BEIRNE STEDMAN

Volume 3B

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Scope of Volume

Statutes:

Full text of Chapters 117 through 150 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1951 heretofore contained in Volume 3 of the General Statutes of North Carolina and the 1951 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-233 (p. 312).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-186 (p. 744).
Federal Supplement volumes 1-95 (p. 248).
United States Reports volumes 1-340 (p. 366).
Supreme Court Reporter volumes 1-71 (p. 473).
North Carolina Law Review volumes 1-29 (p. 226).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R.	Potter's Revisal (1821, 1827)
R. S.	Revised Statutes (1837)
R. C.	Revised Code (1854)
C. C. P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C. S.	Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 has been replaced by recompiled volumes 3A, 3B and 3C. These new volumes contain Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. Chapters 106 through 116 appear in volume 3A, Chapters 117 through 150 in volume 3B, and Chapters 151 through 166 in volume 3C.

Both the statutes and the annotations in the recompiled volumes are in larger type and in more convenient form than in the original volume. The annotations in the new volumes comprise those which appeared in original volume 3 and the 1951 Cumulative Supplement thereto; however, they have been considerably revised, and it is believed that the present annotations are an improvement over the old.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

The recompiled volumes have been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

HARRY McMULLAN,
Attorney General.

January 31, 1952.

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ARTICLE 1.

Rural Electrification Authority.

§ **117-1. Rural Electrification Authority created; appointment; terms of members.**—An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such Authority to consist of six members to be appointed by the governor of North Carolina; two appointed for a term of two years; two for a term of four years and two for a term of six years, and their successors shall be appointed for a term of four years. (1935, c. 288, s. 1.)

Editor's Note.—For an analysis of this chapter, see 13 N. C. Law Rev. 382. For article on Public Utilities—Rural Electrification Co-Operatives—Certificate of Convenience and Necessity, see 16 N. C. Law Rev. 46.

§ **117-2. Powers.**—The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

(a) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.

(b) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.

(c) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.

(d) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this chapter, to be known as "electric membership corporations."

(e) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.

(f) To have authority to call upon the Utilities Commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the Utilities Commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.

(g) To have the power of eminent domain for the purpose of condemning rights of way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law.

(h) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.

(i) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.

(j) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.

(k) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.

(l) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2.)

§ **117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.**—The Authority itself shall not be a rate making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the Utilities Commission of North Carolina, and the Authority shall only have the right of suggestion and petition to the Utilities Commission of its opinion as to the proper rates and service charges and line extensions, and no rate recommended or suggested by the Authority shall be effective until approved by the Utilities Commission: Provided, that if the Utilities Commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the Utilities Commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

§ **117-4. Organization meeting of Authority; chairman and secretary.**—Promptly after their appointment the Authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in §§ 143-35 to 143-47. (1935, c. 288, s. 4.)

§ **117-5. Compensation and expenses.**—All members of the Authority, except the chairman and secretary, shall receive as compensation for their services the sum of seven dollars ($7.00) per day and actual expenses incurred while in the performance of their duties. Members of the Authority shall not be allowed per diem and expenses for more than twelve meetings in any one year. (1935, c. 288, s. 5; 1939, c. 97.)

Editor's Note. — Prior to the 1939 amendment members of the Authority, except the chairman and secretary, served without compensation but received actual expenses.

ARTICLE 2.

Electric Membership Corporations.

§ **117-6. Title of article.**—This article may be cited as the "Electric Membership Corporation Act." (1935, c. 291, s. 1.)

Local Modification. — Carteret, Craven, Greene, Hoke, Onslow, Pamlico and Pitt: 1941, c. 314.

Cited in Carolina Power, etc., Co. v. Bowman, 228 N. C. 319, 45 S. E. (2d) 531 (1947); Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543 (1939).

§ **117-7. Definitions.**—The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article.

(b) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(c) "Acquire" shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.

(d) "Law" shall mean any act or statute, general, special or local of this State.

(e) "Federal agency" shall mean and include the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(f) "Board" shall mean the board of directors of a corporation formed under this article. (1935, c. 291, s. 2.)

§ **117-8. Formation in unserved communities; filing application with Rural Electrification Authority.**—When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

§ **117-9. Issuance of privilege for formation of such corporation.**—Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

§ **117-10. Formation authorized.**—Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

§ **117-11. Contents of certificate of incorporation.**—The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of .... Electric Membership Corporation" (the blank space being filled in with the name of the corporation), and shall state:

(a) The name of the corporation, which name shall be such as to distinguish it from any other corporation.

(b) A reasonable description of the territory in which its operations are principally to be conducted.

(c) The location of its principal office and the post-office address thereof.

(d) The maximum number of directors, not less than three.

(e) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.

(f) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.

(g) The terms and conditions upon which members of the corporation shall be admitted.

(h) The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

§ **117-12. Execution and filing of certificate of incorporation by residents of territory to be served.**—The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the clerk of the superior court in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7.)

§ **117-13. Board of directors; compensation; president and secretary.**—Each corporation formed hereunder shall have a board of directors and the powers of a corporation shali be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote. The directors must be members and shall not be entitled to compensation for their services. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8.)

§ **117-14. Powers of board.**—The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

(a) The power to adopt and amend bylaws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the bylaws. The bylaws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof.

(b) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.

(c) To execute instruments.

(d) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

Editor's Note.—The 1941 amendment rewrote paragraph (a).

§ **117-15. Certificates of membership.**—A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

§ **117-16. Corporate purpose.**—The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation. (1935, c. 291, s. 11.)

Persons who are not members of an electric membership corporation may not maintain an action challenging the validity of acts of the director of the corporation, and the fact that such persons are eligible and might hereafter become members and maintain an action under the principle announced in Gorrell v. Greensboro Water Supply Co., 124 N. C. 328, 32 S. E. 720, 70 Am. St. Rep. 598, 46 L. R. A. 513 (1899), does not affect this result, since they have no rights or interest in the management of the corporation until they are members. Bailey v. Carolina Power, etc., Co., 212 N. C. 768, 195 S. E. 64 (1938).

§ **117-17. General grant of powers.** — Each corporation formed under this article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

§ **117-18. Specific grant of powers.**—Subject only to the Constitution of the State, a corporation created under the provisions of this article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems.

(e) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.

(f) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right of way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final.

(g) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.

(i) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

(j) To contract debts, borrow money, and to issue or assume the payment of bonds.

(k) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.

(l) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.

(m) To extend, construct, operate and maintain power lines into adjacent states. (1935, c. 291, s. 13; 1941, c. 335.)

Editor's Note. — The 1941 amendment added subsection (m).

§ **117-19. Declared public agency of State; taxes and assessments.**—Whenever an electric membership corporation is formed in the manner herein provided, the same shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed. (1935, c. 291, s. 14.)

§ **117-20. Encumbrance, sale, etc., of property.**—No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property, which in the judgment of the board, is not necessary or useful in operating the corporation) unless authorized so to do (a) by the votes of at least a majority of its members, and (b) the consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained. (1935, c. 291, s. 15.)

§ **117-21. Issuance of bonds.**—A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum per annum, payable semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16.)

§ **117-22. Covenants or agreements for security of bonds.**—In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

§ **117-23. Purchase and cancellation of bonds.** — A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled. (1935, c. 291, s. 18.)

§ **117-24. Dissolution.**—Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ...." (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(b) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1935, c. 291, s. 19.)

§ **117-25. Amendment of certificate of incorporation.**—A corporation created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of ....Electric Membership Corporation" and state:

(a) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.

(b) The date of filing the certificate of incorporation in each public office where filed.

(c) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted. Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

§ **117-26. Application for grant or loan from governmental agency.**—Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder. (1935, c. 291, s. 21.)

§ **117-27. Article complete in itself and controlling.**—This article is complete in itself and shall be controlling. The provisions of any other law, general, special, or local, except as provided in this article, shall not apply to a corporation formed under this article. (1935, c. 291, s. 23.)

For comment on this enactment, see 19 N. C. Law Rev. 517.

Article 3.

Miscellaneous Provisions.

§ **117-28. Foreign corporations; domestication; rights and privileges.**—Any electric membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs or for the purpose of supplying electric service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 517.

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ **117-29. Assistance from Rural Electrification Authority in procuring adequate telephone service.**—Any number of persons residing in any rural community who are not provided with telephone service or are inadequately provided with same, may make application to the Rural Electrification Authority, upon such form as may be provided by the Rural Electrification Authority for assistance in securing telephone service, showing the circumstances of such community or communities with regard to telephone service and the need therefor. The Rural Electrification Authority shall make an investigation of the situation with respect to telephone service in such rural community or communities and if, upon investigation, it appears that such community or communities are not served with needed telephones or are inadequately served, the facts with reference thereto shall be collected by the Rural Electrification Authority and the Rural Electrification Authority shall promptly bring these facts to the attention of any telephone company serving the area, and shall make reasonable efforts to get such telephone company to provide the needed telephone service in such community or communities. (1945, c. 853, s. 1.)

§ **117-30. Telephone membership corporations.**—In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under article two of this chapter, and all of the provisions of said article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said article; except that the provisions of §§ 117-8 and 117-9 shall not be applicable to the organization of a telephone membership corporation, and except that such corporation so formed shall have no authority to engage in any business except the telephone business necessary to serving the community or communities prescribed in the application: Provided, that the references in said article to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines and telephone service. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city. (1945, c. 853, s. 2.)

§ **117-31. Power of Rural Electrification Authority to prosecute requested investigations.**—In investigating the application filed with the Rural Electrification Authority under the provisions of § 117-30 of this article, the

Rural Electrification Authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call upon the Utilities Commission of the State to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service. (1945, c. 853, s. 3.)

§ **117-32. Loans from federal agencies.**—Whenever any corporation organized under the provisions of this article desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, it shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make application for grants or loans to any such corporation. Nothing in this article shall be deemed to authorize any county, city or town to engage in the telephone business. (1945, c. 853, s. 4.)

Chapter 118.

Firemen's Relief Fund.

Article 1.

Fund Derived from Fire Insurance Companies.

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ARTICLE 1.

Fund Derived from Fire Insurance Companies.

§ **118-1. Fire insurance companies to report premiums collected.**—Every fire insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars or more, and which enforces the fire laws to the satisfaction of the Insurance Commissioner, shall return to the Insurance Commissioner of the State of North Carolina a just and true account of all premiums collected and received from all fire insurance business done within the limits of such towns and cities during the year ending December thirty-first, or such portion thereof as they may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within sixty days from and after the thirty-first day of December of each year. (1907, c. 831, s. 1; 1919, c. 180; C. S., s. 6063; 1929, c. 286.)

Editor's Note.—Prior to the 1929 amendment this section applied only to business done in an "incorporated" city or town.

§ **118-1.1. Definitions.**—As used in this chapter, the words "city", "cities", "town" or "towns" shall also include and mean sanitary districts, school districts, rural fire districts and any other political subdivisions of the State having an organized fire department.

Whenever the clerk of any city or town is required to perform any act pursuant to this chapter, clerk shall mean the person so designated by the governing body or committee where there is no clerk. (1951, c. 1032, s. 1.)

§ **118-2. Tax on receipts for premiums.**—Every fire insurance company, corporation, or association as aforesaid shall, within seventy-five days from December thirty-first of each year, deliver and pay to the State Insurance Commissioner the sum of fifty cents out of and from every one hundred dollars, and at that rate, upon the amount of all premiums written on fire and lightning policies covering property situated within the limits of such towns and cities during the year ending December thirty-first in each year, or for such portion of each year as said company, corporation, or association shall have done business in said towns and cities. (1907, c. 831, s. 2; C. S., s. 6064.)

§ **118-3. Insurance Commissioner to investigate returns and collect tax.**—Every such company, corporation, or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated within the limits of such towns and cities; and in case any fraud, misrepresentation, or mistake of any returns, as provided for in this article, be apparent, it shall be the duty of the Insurance Commissioner to investigate such returns and collect the amount which he shall find to be due. (1907, c. 831, s. 3; C. S., s. 6065.)

§ **118-4. Penalty for failure to report and pay tax.**—Every fire insurance company, association, or corporation aforesaid which shall knowingly or willfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars for the use and benefit of the fire department of such town or city, to be recovered in a civil action in the name of the town or city. (1907, c. 831, s. 4; C. S., s. 6066.)

§ **118-5. Insurance Commissioner to pay fund to treasurer.** — The Insurance Commissioner shall deduct the sum of five per cent from the money so collected from the insurance companies, corporations, or associations, as aforesaid, and pay the same over to the treasurer of the State Firemen's Association for general purposes, and the remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the several towns and cities in the State having or that may hereafter have organized fire departments as provided in this article, said Insurance Commissioner shall pay to the treasurer of each town or city to be held by him as a separate and distinct fund, and he shall immediately pay the same to the treasurer of the local board of trustees upon his election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, which board shall be composed of five members, residents of said city or town as hereinafter provided for, to be used by them for the purposes as named in § 118-7. (1907, c. 831, s. 5; C. S., s. 6067; 1925, c. 41.)

Editor's Note.—The 1925 amendment inserted the provision as to the deduction and payment to the treasurer of the State Firemen's Association, and the provision as to payment by the treasurers of towns to the treasurers of the local boards of trustees.

§ **118-6. Trustees appointed; organization.**—In each town or city complying with and deriving benefits from the provisions of this article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department, two elected by the mayor and board of aldermen or other local governing body, the remaining member to be named by the Commissioner of Insurance. Their selection and term of office shall be as follows:

a. The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.

b. The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board, one to hold office for two years and one to hold office for one year, and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.

c. The Commissioner of Insurance shall appoint one representative in January each year and he shall serve for one year.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond in a sum equal to the amount of moneys in his hands, to be approved by the Commissioner of Insurance, for the faithful and proper discharge of the duties of his office. If the chief of the local fire department is not named on the board of trustees as above provided, he shall be ex officio a member, but without the privilege of voting on matters before the board. (1907, c. 831, s. 6; C. S., s. 6068; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054.)

Editor's Note. — The 1925 amendment specified the amount of the bond required of the treasurer of the board of trustees. The 1945 amendment added the provision in the last sentence. The 1947 amendment required the bond to be filed with the Commissioner of Insurance. This requirement was omitted by the 1949 amendment which rewrote the section.

§ 118-7. Disbursement of funds by trustees. — The board of trustees shall have entire control of the funds derived from the provisions of this article, and shall disburse the funds only for the following purposes:

1. To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.

2. To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

3. To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse.

4. To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability. (1907, c. 831, s. 6; 1919, c. 180; C. S., s. 6069; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2.)

Local Modification.—Gastonia: 1945, c. 183; Mecklenburg: 1949, c. 728; New Hanover: 1929, c. 328; city of Charlotte: 1947, c. 837; 1949, c. 728; city of Durham: 1951, c. 577; City of High Point: 1941, c. 138.

Editor's Note. — The 1921 and 1925 amendments reduced the number of years in the third subdivision from ten to five, and the 1923 amendment added subdivision four. The 1945 amendment struck out the words "or actually dependent upon charity" formerly appearing at the end of subsection 3, and rewrote subsection 4.

Cited in Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

§ 118-8. Trustees to keep account and file report; effect of failure. —The board of trustees shall keep a correct account of all moneys received and disbursed by them, and shall at the annual meeting of the North Carolina State Firemen's Association render an itemized statement of the same, for publication in the annual report, a copy of which report shall be made annually to the State Insurance Commissioner; and in case any board of trustees in any of the towns and cities benefited by this article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted to their care, or shall neglect or fail to report at the annual meeting of the State Association, then the Insurance Commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the State Firemen's Association, and adjusted to the satisfaction of the State Insurance Commissioner. Should such payments be unadjusted for a period of fifteen months from the time when such payments would otherwise have been made, then the Insurance Commissioner shall pay over the said amount to the treasurer of the North Carolina State Firemen's Association and it shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 7; C. S., s. 6070; 1925, c. 41.)

Editor's Note. — The 1925 amendment changed the last sentence.

§ **118-9. Municipal clerk to certify list of fire companies; effect of failure.** — The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the Insurance Commissioner his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the Insurance Commissioner may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the Insurance Commissioner on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall forfeit the payment next due to be paid to said board of trustees, and the Insurance Commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 8; C. S., s. 6071; 1925, c. 41; 1925, c. 309, s. 1.)

Editor's Note. — The 1925 amendments added the words "effect of failure" to the caption of this section, and made changes in the second sentence.

§ **118-10. Fire departments to be members of State Firemen's Association and send delegate to meeting.** — For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a business-like manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association, and send at least one accredited delegate to the annual meeting of said Association and comply with its constitution and bylaws. If the fire department of any city, town or village shall fail to send at least one delegate to the annual meeting of the State Firemen's Association and otherwise fails to comply with the constitution and bylaws of said Association, said city, town or village shall forfeit its right to the next annual payment due from the funds mentioned in this article, and the Insurance Commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, however, that the failure of any department to have a delegate or representative present at the annual meeting of the Association shall not have such effect if in the opinion of a majority of the executive committee of said Association such delegate or representative had a valid excuse for his failure so to attend. (1907, c. 831, s. 9; 1919, c. 180; C. S., s. 6072; 1925, c. 41; 1925, c. 309, s. 2.)

Editor's Note. — The 1925 amendment added the provisions as to sending delegates to the annual meeting of the State Firemen's Association and made other changes.

§ **118-11. No discrimination on account of color.**—Inasmuch as there are in a number of the towns and cities of this State fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits. (1905, c. 831, s. 10; C. S., s. 6073.)

Article 2.

State Appropriation.

§ **118-12. Application of fund.**—The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. (1891, c. 468, s. 3; Rev., s. 4393; C. S., s. 6058; 1925, c. 41.)

Editor's Note. — The 1925 amendment added the second sentence.

A fireman may not sue the State Firemen's Association on a claim for benefits under this chapter. Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

A claim for hospital expenses incurred as a result of an injury received by a fireman in the course of his duties does not come within the benefits provided for members of the State Firemen's Association. Carroll v. North Carolina State Firemen's Ass'n, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

§ **118-13. Treasurer to file report and give bond.**—The treasurer of the North Carolina State Firemen's Association shall make a detailed report to the State Treasurer of the yearly expenditures of the appropriation under this chapter on or before the end of the fiscal year, showing the total amount of money in his hands at the time of the filing of the report, and shall give a bond to the State of North Carolina with good and sufficient sureties to the satisfaction of the Treasurer of the State of North Carolina in a sum not less than the amount of money on hand as shown by said report. (1891, c. 468, s. 4; Rev., s. 4394; C. S., s. 6059; 1925, c. 41.)

Editor's Note. — The 1925 amendment added the provision for a report of expenditures.

§ **118-14. Who shall participate in the fund.**—The line of duty entitling one to participate in the fund shall be so construed as to mean actual fire duty only, and any actual duty connected with the fire department when directed to perform the same by an officer in charge. (1891, c. 468, s. 5; Rev., s. 4395; C. S., s. 6060; 1925, c. 41.)

Editor's Note. — The 1925 amendment deleted a former clause defining the time of actual fire duty as service from time of alarm until dismissal at roll call.

§ **118-15. Who may become members.**—Any organized fire company in North Carolina, holding itself ready for duty, may, upon compliance with the requirements of said constitution and bylaws, become a member of the North Carolina State Firemen's Association, and any fireman of good moral character in

North Carolina, and belonging to an organized fire company, who will comply with the requirements of the constitution and bylaws of the North Carolina State Firemen's Association, may become a member of said Association. (1891, c. 468, s. 6; Rev., s. 4396; C. S., s. 6061; 1925, c. 41.)

Editor's Note.—No change was made in the substance of this section by the 1925 amendment.

§ 118-16. Applied to members of regular fire company.—The provisions of §§ 118-12 to 118-16 shall apply to any fireman who is a member of a regularly organized fire company, and is a member in good standing of the North Carolina State Firemen's Association. (1891, c. 468, s. 7; Rev., s. 4397; C. S., s. 6062; 1925, c. 41.)

Cross Reference.—As to the volunteer firemen at the insane hospitals not sharing in the fund provided by this section, see § 122-35.

Editor's Note. — The 1925 amendment added the requirement that the fireman be a member in good standing of the State Firemen's Association.

§ 118-17. Treasurer to pay fund to Volunteer Firemen's Association.—The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one-sixth of the funds arising from the five per cent paid him by the Insurance Commissioner each year, to be used by said North Carolina State Volunteer Firemen's Association for general purposes. (1925, c. 41.)

Chapter 119.

Gasoline and Oil Inspection and Regulation.

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ARTICLE 1.

Lubricating Oils.

§ **119-1. Unlawful substitution.**—It shall be unlawful for any person, firm or corporation to fill any order for lubricating oil, designated by a trademark or distinctive trade name for an automobile or other internal combustion engine with a spurious or substitute oil unless and until it is explained to the person giving the order that the oil offered is not the oil that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. (1927, c. 174, s. 1.)

§ **119-2. Brand or trade name of lubricating oil to be displayed.**—It shall be unlawful for any person, firm or corporation to sell, offer for sale or delivery, or to cause or permit to be sold, offered for sale or delivery, any oil represented as lubricating oil for internal combustion engines unless there shall be firmly attached to or painted at or near the point or outlet from which said oil represented as lubricating oil for internal combustion engines is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in at all times legible letters not less than one-half inch in height comprising the brand or trade name of said lubricating oil: Provided, that if any of said lubricating oil shall have no brand or trade name, the above required sign or label shall consist of the words in letters not less than three inches high, "Lubricating Oil No Brand." (1927, c. 174, s. 2.)

§ **119-3. Misrepresentation of brands for sale.**—It shall be unlawful for any person, firm or corporation to display, at the place of sale, any sign, label or other designating mark which describes any lubricating oil for internal combustion engines not actually sold or offered for sale or delivered at the location at which the sign, label or other designating mark is displayed, or to display any label upon any container which label names or describes any lubricating oil for internal combustion engines not actually contained therein, but offered for sale or sold as such: Provided, this section shall not prevent the advertising of such products when no lubricating oil is offered for sale at such place of advertisement. (1927, c. 174, s. 3.)

§ **119-4. Misdemeanor.**—Any person, firm or corporation violating any of the provisions of this article shall for each offense be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars ($50.00) or more than three hundred dollars ($300.00), or by imprisonment in the county jail for not less than twenty or more than ninety days, or both. (1927, c. 174, s. 4.)

§ **119-5. Person violating or allowing employee to violate article to forfeit $100.**—Any person violating this article, or any person, firm or corporation whose servant, agent or other employee violates this article in the course of his employment shall forfeit to the manufacturer whose oil was ordered, or to the proprietor of the trademark or trade name by which the oil ordered was designated by the purchaser, as the case may be, one hundred dollars ($100.00) for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty against the person, firm or corporation from whom the penalty is claimed. (1927, c. 174, s. 5.)

§ **119-6. Inspection duties devolve upon Commissioner of Agriculture.**—The duties of inspection required by §§ 119-1 through 119-5 shall be performed by the Commissioner of Agriculture. (1933, c. 214, s. 9; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

ARTICLE 2.

Liquid Fuels, Lubricating Oils, Greases, etc.

§ **119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.**—It shall be unlawful for any person, firm, copartnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

Cross Reference. — As to prohibition against sale of antifreeze made from certain compounds, see § 66-66.

§ **119-8. Sale of fuels, etc., different from advertised name prohibited.**—No person, firm, partnership, copartnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

Cross Reference. — As to requirement that brand name be displayed, see § 119-2.

Applied in Maxwell v. Shell Eastern Petroleum Products, 90 F. (2d) 39 (1937).

§ **119-9. Imitation of standard equipment prohibited.**—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, c. 108, s. 3.)

§ **119-10. Juggling trade names, etc., prohibited.**—It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trademark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark or name or other distinguishing mark. (1933, c. 108, s. 4.)

§ **119-11. Mixing different brands for sale under standard trade name prohibited.** — It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name or symbol to any product or material. (1933, c. 108, s. 5.)

§ **119-12. Aiding and assisting in violation of article prohibited.**—It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or copartnership, corporation or corporations or any of their agents or employees, to aid or assist any other person in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trademark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this article. (1933, c. 108, s. 6.)

§ **119-13. Violation made misdemeanor.**—Every person, firm or firms, partnership or copartnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand dollars ($1,000.00) and by imprisonment not to exceed twelve (12) months, or by either or both in the discretion of the trial judge. (1933, c. 108, s. 7.)

ARTICLE 3.

Gasoline and Oil Inspection.

§ **119-14. Title of article.**—This article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

Cross Reference.—See § 105-441.

§ **119-15. "Gasoline" defined.**—The term "gasoline" wherever used in this article shall be construed to mean a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines. (1937, c. 425, s. 2.)

§ **119-16. "Motor fuel" defined.**—"Motor fuel" shall be construed to mean all products commonly or commercially known or sold as gasoline, including casing-head or absorption or natural gasoline, benzol, or naphtha, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines which, when subjected to distillation in accordance to the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials, Designation D-86), show not less than ten per centum recovered below three hundred forty-seven degrees Fahrenheit and not less than ninety-five per centum recovered below four hundred sixty-four degrees Fahrenheit. In addition to the above, any other volatile and inflammable liquid when sold or used to propel a motor vehicle on the highways shall be motor fuel. (1937, c. 425, s. 3.)

§ **119-17. Inspection of kerosene, gasoline and other petroleum products provided for.**—All kerosene used for illuminating or heating purposes and all gasoline used or intended to be used for generating power in internal combustion engines or otherwise sold or offered for sale, and all kerosene, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion engines or which are sold or used for such purposes, and any and all substances or liquids which in themselves or by reasonable combination with others might be used for or as substitutes for motor fuel shall be subject to inspection, to the end that the public may be protected in the quality of petroleum products it buys, that the State's revenue may be protected, and that frauds, substitutions, adulterations and other reprehensible practices may be prevented. (1937, c. 425, s. 4.)

§ **119-18. Inspection fee; allotments for administration expenses.**—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the Commissioner of Revenue a charge of one-fourth of one cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel. The inspection tax shall be due and payable at the same time that the gasoline road tax is due and payable under the provisions of §§ 105-434 to 105-436, and payment shall be made concurrently with payment of said gasoline road tax, unless the Commissioner of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the Budget Bureau, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene, gasoline and other products of petroleum used as motor fuel. (1917, c. 166, s. 4; C. S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5.)

§ **119-19. Failure to report or pay tax; cancellation of license.**—If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Commissioner of Revenue may forthwith cancel the license of such person issued under § 105-433, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Commissioner of Revenue. In the event that the license of any person shall be canceled by the Commissioner of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this article, together with any and all penalties accruing under any of the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said person under § 105-433. (1933, c. 544, s. 10.)

§ **119-20. Penalty for failure to report or to pay taxes promptly.**—When any person shall fail to file reports with the Commissioner of Revenue, as required by this article, or shall fail to pay to the Commissioner of Revenue the amount of inspection tax due to the State of North Carolina when the same shall be payable, a penalty of one hundred per cent (100%) shall be added to the amount of the tax due, and said penalty of one hundred per cent (100%) shall immediately accrue, and thereafter said tax and penalty shall bear interest at the rate of one per cent (1%) per month until the same is paid. (1933, c. 544, s. 11.)

§ **119-21. On failure to report, Commissioner may determine tax.**—Whenever any person shall neglect or refuse to make and file any report as required by this article, or shall file an incorrect or fraudulent report, the Commissioner of Revenue shall determine after an investigation the number of gallons of kerosene oil and other motor fuel with respect to which the person has incurred liability under the tax laws of the State of North Carolina, and shall fix the amount of the taxes and penalties payable by the person under this article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the Commissioner of Revenue of the amount of tax due, and/or interest and/or penalties due to the State, shall constitute prima facie evidence of the claim of the State; and the burden of proof shall be upon the person to show that the assessment was incorrect and contrary to law; and the Commissioner of Revenue may institute action therefor in the Superior Court of Wake County, regardless of the residence of such person or the place where the default occurred. (1933, c. 544, s. 12.)

§ **119-22. "Person" defined.**—The word "person" as used in §§ 119-19 to 119-21 is hereby defined and declared to include and embrace not only the person, firm or corporation liable for the inspection tax, but also all his or its agents, servants and employees. (1933, c. 544, s. 13.)

§ **119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; "Gasoline and Oil Inspection Fund."** — Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. All moneys received under the authority of the inspection laws of this State shall be paid into the State treasury and kept as a distinct fund, to be styled "The Gasoline and Oil Inspection Fund," and the amount remaining in such Fund at June thirtieth and December thirty-first of each year shall be turned over to the general fund by the State Treasurer. (1937, c. 425, s. 6; 1941, c. 36; 1949, c. 1167.)

Editor's Note. — The 1949 amendment rewrote the former first sentence to appear as the present first two sentences. The amendatory act, which specifically amended certain statutes, provides: "The administration of the gasoline and oil inspection law is hereby transferred from the Department of Revenue to the Department of Agriculture. The collection of the gasoline and oil inspection fee or tax shall still be made by the Department of Revenue in the manner in which it is now being collected. In order to effectuate the purposes of this act all statutes in which administrative duties relating to the gasoline and oil inspection law are imposed upon the Commissioner of Revenue are hereby amended so as to impose such duties upon the Commissioner of Agriculture."

§ **119-24. Report of operation and expenses to General Assembly.**—The Commissioner of Revenue shall include in his report to the General Assembly an account of the operation and expenses of his phase of the gasoline and oil inspection law and the Commissioner of Agriculture shall include in his report to the General Assembly an account of his portion of the operation and expenses of the gasoline and oil inspection law. (1937, c. 425, s. 7; 1949, c. 1167.)

Editor's Note. — The 1949 amendment rewrote this section.

§ **119-25. Inspectors, clerks and assistants.**—The Commissioner of Revenue and the Commissioner of Agriculture, respectively, shall appoint and employ such number of inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the gasoline and oil inspection law with the administration or enforcement of which each said Commissioner is charged. All inspectors shall be bonded in the sum of one thousand dollars in the usual manner provided for the bonding of State employees, and the expense of such bonding shall be paid from the Gasoline and Oil Inspection Fund created by this article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars, or be imprisoned for not less than three months nor more than twelve months, or both in the discretion of the court. (1937, c. 425, s. 8; 1949, c. 1167.)

Editor's Note. — The 1949 amendment rewrote the first sentence.

§ 119-26. Gasoline and Oil Inspection Board created. — In order to more fully carry out the provisions of this article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the sum of ten dollars for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and for one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, however, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" in the first two sentences.

§ 119-27. Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.—In the event that the Gasoline and Oil Inspection Board shall adopt standards for grades of gasoline, at all times there shall be firmly attached to or painted on each dispensing pump or other dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina .... grade. Any person, firm, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars and be imprisoned for not more than six months, or either, in the discretion of the court, and the gasoline offered or exposed for sale shall be confiscated.

The gasoline and oil inspectors shall have the authority to immediately seize and seal, to prevent further sales, any dispensing pump or other dispensing device from which gasoline is offered or exposed for sale in violation of or without complying with the provisions of this article. Provided, however, that this section shall not be construed to permit the destruction of any gasoline which may be blended or re-refined or offered for sale as complying with the legal specifications of a lower grade except under order of the court in which an indictment is brought for violation of the provisions of this article. Provided, further, that gasoline that has been confiscated and sealed by the gasoline and oil inspectors for violation of the provisions of this article shall not be offered or exposed for sale until the Director of the Gasoline and Oil Inspection Division has been fully satisfied that the gasoline offered or exposed for sale has been blended or re-refined or properly labeled to meet the requirements of this article and the owners of said gasoline have been notified in writing of this fact by said Director and, provided, further, that the permitting of blending, re-refining or properly labeling of confiscated gasoline shall not be construed to in any manner affect any indictment which may be brought for violation of this section. (1937, c. 425, s. 11; 1939, c. 276, s. 1; 1941, c. 220.)

Editor's Note. — The 1939 amendment added the second paragraph.

§ **119-28. Regulations for sale of substitutes.**—All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the Commissioner of Agriculture for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said Commissioner of Agriculture in writing. (1937, c. 425, s. 12; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue".

§ **119-29. Rules and regulations of Board available to interested parties.**—It shall be the duty of the Commissioner of Agriculture to make available for all interested parties the rules and regulations adopted by the Gasoline and Oil Inspection Board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue".

§ **119-30. Establishment of laboratory for analysis of inspected products.**—The Commissioner of Agriculture is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the Gasoline and Oil Inspection Division for the analysis of inspected products. (1937, c. 425, s. 14; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue".

§ **119-31. Payment for samples taken for inspection.**—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the Commissioner of Agriculture showing that payment has been made as requested. (1937, c. 425, s. 15; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ **119-32. Powers and authority of inspectors.**—The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the State, including the authority to arrest, with or without warrants, and take offenders before the several courts of the State for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of one hundred gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this State, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" near the end of the first sentence.

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of the Commissioner of Agriculture, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, insofar as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the National Conference of Weights and Measures, and recommended by the United States Bureau of Standards, shall be observed by said inspectors insofar as they apply to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the State shall have the same power and authority given by this section to inspectors under the supervision of the Commissioner of Agriculture. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the Commissioner of Agriculture. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within ten days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for not less than three months, or both, in the discretion of the court. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned for not less than thirty days nor more than ninety days, or both, in the discretion of the court. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 425, s. 17; 1949, c. 1167.)

Editor's Note. — The 1949 amendment struck out the words "Commissioner of Revenue" wherever they appeared in the first five sentences of this section and inserted in lieu thereof the words "Commissioner of Agriculture."

§ **119-34. Responsibility of retailers for quality of products.** — The retail dealer shall be held responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the Commissioner of Agriculture at the time of delivery, and in the presence of the distributor or his agent, show that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ **119-35. Adulteration of products offered for sale.**—It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in anywise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 19.)

§ **119-36. Certified copies of official tests admissible in evidence.**—A certified copy of the official test of the analysis of any petroleum product, under the seal of the Commissioner of Agriculture, shall be admissible as evidence of the fact therein stated in any of the courts of this State on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ **119-37. Retail dealers required to keep copies of invoices and delivery tickets.**—Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ **119-38. Prosecution of offenders.**—All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ **119-39. Violation a misdemeanor.**—Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the Commissioner of Revenue or the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 23; 1949, c. 1167.)

Editor's Note. — The 1949 amendment inserted the words "or the Commissioner of Agriculture."

§ **119-40. Manufacturers to notify Commissioner of shipments.**—Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the Commissioner of Agriculture of their shipment, with the name and address of the person, company, or corporation to whom it is sent and the number of gallons, on the day the shipment is made. (1917, c. 166, s. 4; C. S., s. 4856; 1933, c. 214, s. 8; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ **119-41. Persons engaged in transporting are subject to inspection laws.**—The owner or operator of any motor vehicle using the highways of this State or the owner or operator of any boat using the waters of this State transporting into, out of or between points in this State any gasoline or liquid motor fuel taxable in this State and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this State shall make application to the Commissioner of Agriculture on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the Commissioner of Agriculture shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this State except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner or lessee of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. This section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24; 1939, c. 276, s. 2; 1949, c. 1167; 1951, c. 370.)

Editor's Note. — The 1939 amendment inserted the next to last sentence.

The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" in the first two sentences.

The 1951 amendment inserted in the fourth sentence the words "or lessee."

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading. — Every person hauling, transporting or conveying into, out of, or between points in this State any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this State over either the public highways or waterways of this State, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the Commissioner of Agriculture, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the Commissioner of Agriculture shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this State such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the State: Provided, however, that this article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply tank shall have a capacity of more than one hundred gallons: And, provided further, that this section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. (1937, c. 425, s. 25; 1939, c. 276, s. 3; 1949, c. 1167.)

Editor's Note. — Prior to the 1939 amendment the last proviso read "this section shall not apply to franchise carriers."

The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" in the second sentence.

§ 119-43. Display required on containers used in making deliveries. —Every person delivering at wholesale or retail any gasoline in this State shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquid is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the lable shall also bear the words "Unsafe when exposed to heat or fire". (1937, c. 425, s. 26; 1939, c. 276, s. 4; 1949, c. 1167.)

Editor's Note. — The 1939 amendment struck out a former provision exempting franchise carriers. And the 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" near the end of the first sentence.

§ **119-44. Registration of exclusive industrial users of naphthas and coal tar solvents.**—All persons who are exclusive industrial users of naphtha and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the Commissioner of Agriculture as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said Commissioner and the filing of a surety bond in approved form not to exceed the sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the Commissioner of Agriculture, permit licensed distributors of motor fuel in this State to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of industrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided, further, that the rules and regulations adopted by the Commissioner of Agriculture for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or nonobservance of such rules. (1937, c. 425, s. 27; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ **119-45. Certain laws adopted as part of article.** — Sections 119-1 through 119-5 and §§ 119-7 through 119-13 are hereby made a part of this article. (1937, c. 425, s. 28.)

§ **119-46. Charges for analysis of samples.**—The Commissioner of Revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the Gasoline and Oil Inspection Division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, State or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the State treasury to the credit of the Gasoline and Oil Inspection Fund. (1937, c. 425, s. 29.)

§ **119-47. Inspection of fuels used by State.** — The Gasoline and Oil Inspection Division is hereby authorized, upon request of the proper State authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the State of North Carolina for the use of all departments and institutions. (1937, c. 153.)

ARTICLE 4.

Equipment for Handling, etc., Liquefied Petroleum Gases.

§ **119-48. "Liquefied petroleum gas" defined.**—As used in this article, the term "liquefied petroleum gas" shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane), and butylenes. (1947, c. 822, s. 1.)

§ **119-49. Declaration of necessity for regulations; regulations of Commissioner of Agriculture.**—It is hereby declared that the regulation of the design, construction, location, installation and operation of equipment for the storing, handling, transporting by tank truck, tank trailer or otherwise and the utilization of liquefied petroleum gases and the specification of the odorization of said gases and the degree thereof are matters necessary to the preservation of the public health and safety. To that end, the Commissioner of Agriculture shall make and promulgate regulations setting forth minimum general standards covering the design, construction, location, installation and operation of the equipment for storing, handling, transporting by tank truck, tank trailer or otherwise and the utilization of liquefied petroleum gases and the specification of the odorization of said gases and the degree thereof. Said regulations shall be such as are reasonably necessary for the protection, health, welfare and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same and in conformity with the published standards of the National Board of Fire Underwriters and as recommended by the National Fire Protection Association. Such regulations when adopted by the Commissioner of Agriculture shall be filed in the office of the Secretary of State as provided by law. (1947, c. 822, s. 2; 1949, c. 1294.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Insurance." The amendatory act provides: "The administration of the equipment for handling, etc., liquefied petroleum gases, the same being article 4 of chapter 119 of the General Statutes of North Carolina, is hereby transferred from the Department of Insurance to the Department of Agriculture. In order to effectuate the purpose of this act, all statutes in which administrative duties relating to equipment for handling, etc., of liquefied petroleum gases are imposed upon the Commissioner of Insurance are hereby amended so as to impose such duties upon the Commissioner of Agriculture."

§ **119-50. Regulation of use of containers.**—No person, firm or corporation other than the owner or those authorized by the owner so to do shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for any gas, compound, or for any other purpose whatsoever. (1947, c. 822, s. 3.)

§ **119-51. Punishment for violations.**—It shall be unlawful for any person, firm, association or corporation on or after April 4, 1947, to violate any of the provisions hereof or of the lawful regulations of the Commissioner of Agriculture made pursuant hereto. Any person, firm, association or corporation violating any provisions of this article or said regulations hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment or by both fine and imprisonment in the discretion of the court. (1947, c. 822, s. 4; 1949, c. 1294.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Insurance."

§ **119-52. Restrictions on local regulations.**—No municipality or other political subdivision shall adopt or enforce any regulation in conflict with the provisions of this article or with the regulations promulgated pursuant hereto by the Commissioner of Insurance. (1947, c. 822, s. 5.)

Cross Reference. — See note to § 119-49.

Chapter 120.

General Assembly.

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Apportionment of Members.

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120-2. House of Representatives.
120-3. Payment in installments or upon per diem basis; extra sessions.
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Article 1.

Apportionment of Members.

§ **120-1. Senators.**—Until another apportionment of the State shall be had in accordance with the terms of the Constitution and laws of North Carolina, the Senate shall be composed of fifty members, elected from districts constituted as follows:

First District—Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, and Perquimans counties shall elect two senators.

Second District—Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, and Washington shall elect two senators.

Third District—Northampton, Vance, and Warren shall elect one senator.

Fourth District—Edgecombe and Halifax shall elect two senators.

Fifth District—Pitt shall elect one senator.

Sixth District—Franklin, Nash, and Wilson shall elect two senators.

Seventh District—Carteret, Craven, Greene, Jones, Lenoir, and Onslow shall elect two senators.

Eighth District—Johnston and Wayne shall elect two senators.

Ninth District—Duplin, New Hanover, Pender, and Sampson shall elect two senators.

Tenth District—Bladen, Brunswick, Columbus, and Cumberland shall elect two senators.

Eleventh District—Robeson shall elect one senator.

Twelfth District—Harnett, Hoke, Moore, and Randolph shall elect two senators.

Thirteenth District—Chatham, Lee, and Wake shall elect two senators.

Fourteenth District—Durham, Granville, and Person shall elect two senators.

Fifteenth District—Caswell and Rockingham shall elect one senator.

Sixteenth District—Alamance and Orange shall elect one senator.

Seventeenth District—Guilford shall elect one senator.

Eighteenth District—Davidson, Montgomery, Richmond, and Scotland shall elect two senators.

Nineteenth District—Anson, Stanly, and Union shall elect two senators.

Twentieth District—Mecklenburg shall elect one senator.

Twenty-first District—Cabarrus and Rowan shall elect two senators: At the time of holding primary election for nomination of State officers, as provided in chapter one hundred sixty-three, the candidates of the several political parties for one of the senators from said twenty-first district shall be nominated by the respective electors of the several political parties of Rowan County, and the candidates for the other senator from said twenty-first district shall be nominated by the respective electors of the several political parties of Cabarrus County.

Twenty-second District—Forsyth shall elect one senator.

Twenty-third District—Stokes and Surry shall elect one senator.

Twenty-fourth District—Davie, Wilkes and Yadkin shall elect one senator.

Twenty-fifth District—Catawba, Iredell, and Lincoln shall elect two senators.

Twenty-sixth District—Gaston shall elect one senator.

Twenty-seventh District—Cleveland, McDowell, and Rutherford shall elect two senators.

Twenty-eighth District—Alexander, Burke, and Caldwell shall elect one senator.

Twenty-ninth District—Alleghany, Ashe, and Watauga shall elect one senator.

Thirtieth District—Avery, Madison, Mitchell, and Yancey shall elect one senator.

Thirty-first District—Buncombe shall elect one senator.

Thirty-second District—Haywood, Henderson, Jackson, Polk, and Transylvania shall elect two senators.

Thirty-third District—Cherokee, Clay, Graham, Macon, and Swain shall elect one senator. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C. S., s. 6087; 1921, c. 161; 1941, c. 225.)

Editor's Note. — Public Laws 1941, c. 225, from which this section was codified, specifically repealed § 6087 of volume three of the Consolidated Statutes, which showed the former law as changed by the 1921 amendment.

§ **120-2. House of Representatives.** — Until the General Assembly of North Carolina shall make another apportionment as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties of the State in the following manner, to-wit:

The counties of Guilford and Mecklenburg shall elect four members each; the counties of Buncombe, Forsyth, and Wake shall elect three members each; the counties of Cabarrus, Cumberland, Durham, Gaston, Johnston, Pitt, Robeson, and Rowan shall elect two members each; the counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrell, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey shall elect one member each. (Code, s. 2845; Rev., s. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112.)

Editor's Note. — Public Laws 1941, c. 112, from which this section was codified, specifically repealed § 6088 of the Consolidated Statutes of 1919 and the 1921 amendment.

§ **120-3. Payment in installments or upon per diem basis; extra sessions.**—The pay of the members and presiding officers for a regular session of the General Assembly as provided in article 2 of § 28 of the Constitution of North Carolina may be paid in installments, or upon a per diem basis, as asked for by the several members and presiding officers; provided, that in no instance shall installments or per diem amount to more than $15.00 per day for the members and $20.00 per day for the two presiding officers for the number of days the General Assembly has been in session, and the total pay of the presiding officers and members at a regular session shall in no case exceed $1800.00 for each presiding officer and $1,350.00 for each member of both houses. And, provided further, that the pay for an extra session of the General Assembly shall be $20.00 per day for presiding officers and $15.00 per day for members for a period not to exceed 25 days. (1929, c. 2, s. 1; 1951, c. 23, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

§ **120-4**: Repealed by Session Laws 1951, c. 23, s. 2.

Article 2.

Duty and Privilege of Members.

§ **120-5. Presiding officers may administer oaths.**—The President of the Senate is authorized to administer oaths for the qualification of senators and officers of the Senate, and the Speaker of the House of Representatives is authorized to administer oaths for the qualification of all officers of the House and all members who shall appear after the election of Speaker. (1883, c. 19; Code, s. 2855; Rev., s. 4400; C. S., s. 6089.)

§ **120-6. Members to convene at appointed time and place.**—Every person elected to represent any county or district in the General Assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (1787, c. 277, s. 1, P. R.; R. C., c. 52, s. 27; Code, s. 2847; Rev., s. 4401; C. S., s. 6090.)

§ **120-7. Penalty for failure to discharge duty.**—If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the General Assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (1787, c. 277, s. 2, P. R.; R. C., c. 52, s. 28; Code, s. 2848; Rev., s. 4402; C. S., s. 6091.)

§ **120-8. Expulsion for corrupt practices in election.**—If any person elected a member of the General Assembly shall, by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly. (1801, c. 580, s. 2, P. R.; R. C., c. 52, s. 24; Code, s. 2846; Rev., s. 4403; C. S., s. 6092.)

§ **120-9. Freedom of speech; protection from arrest.**—The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the General Assembly. (1787, c. 277, s. 3, P. R.; R. C., c. 52, s. 29; Code, s. 2849; Rev., s. 4404; C. S., s. 6093.)

Article 3.

Contests.

§ **120-10. Notice of contest.**—No person shall be allowed to contest the seat of any member of the General Assembly unless he shall have given to the member thirty days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation. (1796, c. 466, s. 1, P. R.; R. C., c. 52, s. 31; Code, s. 2850; 1893, c. 192; Rev., s. 4406; C. S., s. 6095.)

§ 120-11. Depositions taken; penalty and privilege of witnesses.—Any justice of the peace, or any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpœnas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpœna, he shall forfeit and pay to the party causing him to be summoned forty dollars. And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election. (1800, c. 557, s. 1, P. R.; R. C., c. 52, s. 32; 1868-9, c. 270, s. 12; Code, s. 2851; Rev., s. 4407; C. S., s. 6096.)

ARTICLE 4.

Reports of Officers to General Assembly.

§ 120-12. Reports from State institutions and departments.—It shall be the duty of the chief officer of each department of the State and of the boards of directors of all institutions supported in whole or in part by appropriations from the State, to submit to the General Assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the Governor, to be transmitted by him with his message to the General Assembly. (1800, c. 557, s. 2, P. R.; Code, s. 2865; Rev., s. 4410; C. S., s. 6099.)

§ 120-13. Reports of commissions; boards and departments.—The State Highway and Public Works Commission, the Superintendent of Public Instruction, the Department of Agriculture, the State Board of Health, and the State Board of Charities and Public Welfare, and such other boards, departments and commissions as the Governor may direct shall each make a full report of the operation of their respective departments or commissions together with their recommendations for the future operation of their departments or commissions to the members of the General Assembly.

All such reports shall be distributed as heretofore provided for, not later than twenty days after the general election in November preceding the convening of the General Assembly.

Failure on the part of any of the above mentioned commissions or departments to distribute their reports to the members of the General Assembly within the time prescribed by this section shall be cause for impeachment and for removal from office. (1929, c. 248.)

ARTICLE 5.

Investigating Committees.

§ 120-14. Power of committees.—Any committee of investigation raised either by joint resolution or resolution of either house of the General Assembly has full power to send for persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise. (1868-9, c. 50, s. 1; Code, s. 2853; Rev., s. 4412; C. S., s. 6100.)

Duration of Authority.—In the absence of express enactment otherwise, the existence of a legislative committee necessarily determines upon the adjournment of the body to which it belongs. Bank v. Worth, 117 N. C. 146, 23 S. E. 160 (1895).

§ **120-15. Chairman may administer oaths.**—The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths. (1869-70, c. 5, s. 3; Code, s. 2856; Rev., s. 4413; C. S., s. 6101.)

§ **120-16. Pay of witnesses.**—Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents for every mile traveling to and from his residence, and ferriage, to be recovered before any justice of the peace upon the certificate of the commissioner. (1800, c. 557, s. 2, P. R.; R. C., c. 52, s. 33; Code, s. 2860; Rev., s. 4414; C. S., s. 6102.)

§ **120-17. Appearance before committee.**—Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the General Assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary. (1868-9, c. 270, s. 10; Code, s. 2858; Rev., s. 4415; C. S., s. 6103.)

§ **120-18. Appeal from denial of right to be heard.**—If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he shows good reason for his request the house shall order it to be granted. (1868-9, c. 270, s. 11; Code, s. 2859; Rev., s. 4416; C. S., s. 6104.)

§ **120-19. State officers, etc., upon request, to furnish data and information to legislative committees.**—All officers, agents, agencies, and departments of the State are required to give to any committee of the General Assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or any of its committees or chairmen thereof. (Resolution 19, 1937, p. 927.)

ARTICLE 6.

Acts and Journals.

§ **120-20. When acts take effect.**—Acts of the General Assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (1799, c. 527, P. R.; R. C., c. 52, s. 35; 1868-9, c. 270, s. 1; Code, s. 2862; Rev., s. 4417; C. S., s. 6105.)

Editor's Note. — This section abrogates the doctrine of Sumner v. Barksdale, 1 N. C. 328 (1800), and Smith v. Smith, 1 N. C. 30 (17—), in which it was held that acts of the General Assembly take effect from the beginning of the session in which they are passed.

Where an act declares that it is to be in force from and after its ratification, instead of its passage, then the day on which it is ratified by the signatures of the speakers of the two houses, is the day from and after which the act is in force. Hamlet v. Taylor, 50 N. C. 36 (1857), holding that an act which provides that it shall be in force from and after its passage takes effect from the first day of the session at which it was passed.

Where a statute is to be in force from and after its ratification it will be held effective from the first moment of the day of its enactment, in the absence of evidence of the precise time; such evidence, however, will always be received when required for the prevention of a wrong or the assertion of a meritorious right. Lloyd v. North Carolina R. Co., 151 N. C. 536, 66 S. E. 604 (1909).

§ **120-21. Notice given of private acts.** — Any person who may desire the passage of a private law shall give notice of his intention to make application by advertisement in some newspaper of the State which circulates in the county where the applicant resides, or in which such private law will operate, or by advertisement at the door of the courthouse and three other public places in such county for at least thirty days before the application; and when any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced before the second reading thereof. (Const., art. 2, s. 12; 1796, c. 466, s. 2, P. R.; 1835, c. 15; R. C., c. 52, s. 34; Code, s. 2861; Rev., s. 4418; C. S., s. 6106.)

Cross Reference.—For constitutional requirement of notice, see Art. II, § 12 of the Constitution.

Conclusive Presumption as to Notice.—The courts will conclusively presume, from the ratification of a legislative act authorizing a county to issue bonds, that the notice of thirty days required by § 12, Article II of the Constitution has been given. Cox v. Commissioners, 146 N. C. 584, 60 S. E. 516 (1908).

If the legislative journal is silent as to the fact, the presumption would be that the legislature obeyed the Constitution. Gatlin v. Tarboro, 78 N. C. 119 (1878).

The courts will not go behind the ratification of an act to inquire as to the giving of notice, and will conclusively presume that the requirement of notice has been observed. State v. Holmes, 207 N. C. 293, 176 S. E. 746 (1934).

§ **120-22. Enrollment of acts.**—All bills passed by the General Assembly shall be enrolled for ratification under the supervision and direction of the Secretary of State. Prior to enrolling any bill the Secretary of State shall substitute the corresponding Arabic numerals for any date or for any section number of the General Statutes or of any act of the General Assembly which is written in words. All bills so enrolled shall be typewritten and carefully proofread. The Secretary of State is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the General Assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars ($6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars ($5.00) per day for his services: Provided, that when the business of the General Assembly has reached such a proportion that the employees authorized are unable to keep up with the enrollment of bills as they are passed, the Secretary of State is hereby authorized to use the employees in the various State departments before and after office hours in the enrollment of such bills, and they shall be paid one cent per line upon certification made to the State Auditor by the Secretary of State. (1903, c. 5; Rev., s. 4422; C. S., s. 6108; 1933, c. 173; 1945, c. 416, s. 1; 1947, c. 378.)

Editor's Note.—The 1933 amendment rewrote this section.

The 1945 amendment substituted the present proviso at the end of this section for the former proviso which authorized the rules committees to increase or decrease the number of persons employed in the enrollment of bills. Section 2 of the amendatory act provides that State employees borrowed and used to do work under the proviso shall not be entitled to receive any additional compensation for services which may be performed during their regular office hours.

The 1947 amendment inserted the second sentence.

§§ **120-23 to 120-25:** Transferred to §§ 147-43.1 to 147-43.3 by virtue of Session Laws 1943, c. 543.

§ **120-26:** Repealed by Session Laws 1943, c. 543.

§ **120-27. Journals; preparation and filing by clerks of houses.**—It shall be the duty of the principal clerks of the two houses of the General Assembly to hasten the preparation of their journals for the printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the Secretary of State. (1872-3, c. 45, ss. 2, 3; Code, ss. 3627, 3628; Rev., s. 5100; C. S., s. 7299.)

§ **120-28. Journals indexed by clerks.**—The principal clerks of the two houses of the General Assembly shall provide full and complete indexes for the journals of their respective houses. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 4421; C. S., s. 6112.)

§ **120-29. Journals deposited with Secretary of State.**—The principal clerks of the Senate and House of Representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the Secretary of State the journals of the General Assembly; and the Secretary of State shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant. (1819, c. 1020, P. R.; R. C., c. 52, s. 36; Code, s. 2867; Rev., s. 4420; C. S., s. 6113.)

§ **120-30. Bills and legislative documents.**—The bills and all other documents ordered to be printed by either branch of the General Assembly shall be printed in octavo form without a title page. But the first page shall be printed as follows: At the head of the page there shall be four rules, one double, two single, and one parallel, extending across the page. Between said rules shall be printed, first, the name of the house where the bill originated, with the year and date of the session, the name of the introducer, and the name of the printer; after leaving a space the width of two-line pica, a synopsis, or caption of the bill, or report of the committee, or whatever it may be, shall be set up with pica capitals. After such heading, the said document shall follow immediately, commencing with a paragraph, allowing a space the width of small pica between the heading and commencement of the same. (R. C., c. 93, s. 3; Code, s. 3644; Rev., s. 5102; C. S., s. 7301.)

Article 7.

Employees.

§ **120-31. Legislative employees paid on certificate of presiding officers.** — The Auditor is authorized to audit the account of any employee of the Senate or of the House of Representatives, upon the certificate of the President of the Senate and of the Speaker of the House of Representatives that such services have been rendered for which the account is presented, and that the amount as stated in said account is reasonable, just and proper. (1870-71, resolution, p. 508; Code, s. 2873; Rev., s. 2735; C. S., s. 3848.)

§ **120-32. Principal clerk; term of office; duties.**—The principal clerk of each house of the General Assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed for the meeting of the General Assembly, and on the first day thereof, and perform the duties of his office. (1846, c. 63; R. C., c. 52, s. 37; Code, s. 2870; Rev., s. 4426; C. S., s. 6114.)

§ **120-33. Compensation of employees of the General Assembly; mileage.**—The principal clerks of each house and the chief enrolling clerk shall be allowed the sum of fifteen dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The journal clerks, calendar clerks, chief engrossing clerks, reading clerks, and sergeant-at-arms in each house shall be allowed the sum of thirteen dollars per day during the session of the General

Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the calendar clerk and the assistants to the journal clerk and the clerks to the committees on finance and appropriations of each house shall be allowed the sum of eleven dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The secretary to the Speaker of the House of Representatives, secretary to the Lieutenant-Governor, assistants to the engrossing clerks, assistants appointed by the Secretary of State to supervise enrolling of bills and resolutions, the clerks to all committees which under the rules of either house are entitled to clerks, the disbursing clerks and joint disbursing clerks shall be allowed the sum of ten dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from Raleigh to their homes and return. The typists, who are not stenographers, employed by either house of the General Assembly shall be allowed the sum of nine dollars per day and mileage at the rate of ten cents per mile for one round trip only, from their homes to Raleigh and return. The chief pages of the House of Representatives and the Senate shall receive the sum of six dollars fifty cents per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive the sum of five dollars per day during the session of the General Assembly and mileage at the rate of ten cents per mile, for one round trip only, from their homes to Raleigh and return. The chaplain of each house shall be allowed the sum of eight dollars per day and mileage at the rate of ten cents per mile, for one round trip only, from his home to Raleigh and return. All laborers authorized by law or rules of either the House of Representatives or the Senate shall receive during the session of the General Assembly the sum of seven dollars per day during the session of the General Assembly and mileage at the rate of ten cent per mile, for one round trip only, from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 393; 1945, c. 9; 1951, c. 2.)

Editor's Note.—The 1951 amendment rewrote this section as changed by the previous amendments.

§ **120-34. Classification of laborers.**—The chairman of the committee on rules of the House of Representatives and the chairman of the committee on rules of the Senate are hereby authorized, empowered and directed to classify the laborers of the General Assembly and certify to the chief clerk of the House of Representatives and the chief clerk of the Senate the names of all laborers of the first class and all laborers of the second class, to the end that proper warrants may be issued in payment of services rendered in accordance with § 120-33 and the list when certified shall be the classification of such laborers and they shall be paid accordingly. (1925, c. 116.)

§ **120-35. Principal clerks; extra compensation.**—The principal clerks of the General Assembly shall be allowed seven hundred fifty dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the General Assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the Secretary of State. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 2732; 1911, c. 116; 1919, c. 170; C. S., s. 3855; 1921, c. 160; 1947, c. 998.)

Editor's Note. — The 1947 amendment increased the compensation for indexing the journals from four hundred to seven hundred fifty dollars.

§ 120-36. Compensation of principal clerks for services in organizing Senate and House.—The principal clerks of the Senate and House of Representatives, together with such assistants as may be necessary in arranging the halls of the Senate and House and completing the organization of the two branches of the General Assembly before the days for convening thereof, and such services as are rendered after adjournment in the completion of the records, shall receive the same per diem as shall be allowed by law to the said clerks and their assistants during the session. The State Auditor is directed to issue his warrants for such clerks and for such time as is certified to by the President of the Senate and the Speaker of the House, upon vouchers signed by them. (1923, c. 130; C. S., s. 3855(a).)

Article 8.

Preservation and Protection of Furniture and Fixtures.

§ 120-37. Principal clerks to take and publish inventory. — At the end of each and every session of the General Assembly, the principal clerks of each house shall take an inventory of the furniture, desks, fixtures, chairs, and other property belonging to their respective houses, and publish said inventory in the appendix of their respective journals. (1921, c. 219, s. 1; C. S., s. 6116-(a).)

§ 120-38. Duty and responsibility of Board of Public Buildings and Grounds.—The Board of Public Buildings and Grounds shall have charge and care of the said furniture and fixtures during the vacations of the General Assembly, and it shall be its duty to see that said furniture remains in the offices and halls of the two houses from session to session, and it shall be responsible for the safekeeping of said furniture and fixtures. (1921, c. 219, s. 2; C. S., s. 6116(b).)

§ 120-39. Removal of furniture and fixtures a misdemeanor.—It shall be a misdemeanor for any person or persons to remove any of said furniture and fixtures from the halls of the General Assembly between sessions of the legislature for any purpose whatever. (1921, c. 219, s. 3; C. S., s. 6116(c).)

Article 9.

Lobbying.

§ 120-40. Lobbying defined; registration of lobbyists.—Every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed, to be entered upon a legislative docket as hereafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. (1933, c. 11, s. 1.)

Editor's Note. — For a discussion of this and the following sections, see 11 N. C. Law Rev. 235.

§ 120-41. Legislative docket for registration.—The Secretary of State shall prepare and keep the legislative docket for the uses provided in this article. In such docket shall be entered the name, occupation or business, and business address of the employer, the name, residence and occupation of the person employed, the date of employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the subject or subjects of legislation to which the employment relates. Such docket shall be a public record and open to the inspection of any citizen at any time during the regular business hours of the office of the Secretary of State. (1933, c. 11, s. 2.)

§ **120-42. Contingent fees prohibited.**—No person shall be employed as a legislative counsel or agent for a compensation dependent, in any manner, upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the General Assembly, or of either branch thereof, or any committee thereof. (1933, c. 11, s. 3.)

§ **120-43. Written authority from employer to be filed.**—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the Secretary of State within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. (1933, c. 11, s. 4.)

§ **120-44. Detailed statement of expenses to be filed.**—Within thirty days after the final adjournment of the General Assembly every person, corporation or association, whose name appears upon the legislative docket of the session, shall file with the Secretary of State a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with promoting or opposing in any manner the passage by the General Assembly of any legislation coming within the terms of this article. Such statements shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. (1933, c. 11, s. 5.)

§ **120-45. Going upon floor during session prohibited.**—It shall be unlawful for any person, employed for a pecuniary consideration to act as legislative counsel or agent, as defined by this article, to go upon the floor of either house of the General Assembly while the same is in session, except upon invitation of such house. (1933, c. 11, s. 6.)

§ **120-46. Application of article.**—The provisions of this article shall not apply to any county, city, town or municipality, but shall apply to the executive officers of all other corporations who undertake, in such capacity, to perform services as legislative counsel or agent for such corporations, regardless of whether they receive additional compensation for such services. (1933, c. 11, s. 7.)

§ **120-47. Punishment for violation.** — Any legislative counsel or agent, and any employer of such legislative counsel or agent, violating any provision of this article, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than one thousand dollars, or imprisoned not exceeding two years, or both. (1933, c. 11, s. 8.)

Article 10.

Influencing Public Opinion or Legislation.

§ **120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.**—Every person, firm, corporation, association, or organization, whether by or through its agents, servants, employees or officers, who or which is principally engaged in the activity or business of influencing public opinion and/or legislation in this State shall, prior to engaging in such activity or business, cause his, or its name to be entered upon a docket in the office of the Secretary of State of North Carolina, as hereinafter provided. (1947, c. 891, s. 1.)

Editor's Note. — For comment on this article, see 25 N. C. Law Rev. 458.

§ **120-49. Information to be shown on docket.** — The following information shall be entered in such docket:

The name, business address of the principal and all branch offices of the applicant; the purpose or purposes for which such corporation, association, or organization was formed; the names of the principal officers, the names and addresses of its agents, servants, employees or officers by or through which it intends to carry on such activity or business in this State; a financial statement showing the assets and liabilities of the applicant and the source or sources of its income, itemizing in detail any contributions, donations, gifts or other income and from what source or sources received. (1947, c. 891, s. 2.)

§ **120-50. Docket kept by Secretary of State; record open to public.** —The Secretary of State shall prepare and keep in his office the docket containing the information required by § 120-49. Such record shall be a public record and shall be open to the inspection of any citizen at any time during the regular business hours of the office of the Secretary of State. (1947, c. 891, s. 3.)

§ **120-51. Certain localized activities exempted.**—This article shall not apply to any person, firm, corporation, or organization who or which is engaged in influencing public opinion on any matter which is applicable only to one county or one county and a county contiguous thereto. (1947, c. 891, s. 4.)

§ **120-52. Failure to comply with article made misdemeanor.**—Any person, firm, corporation, association, or organization who or which shall engage in the activity or business herein described without first causing his, her, or its name to be entered upon such docket in the manner and form prescribed in this article shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court. (1947, c. 891, s. 5.)

§ **120-53. Time for registration by persons presently engaged in regulated activities.**—All persons engaged in the activity or business herein described, on April 5, 1947, shall, within thirty days thereafter, cause his, her, or its name to be entered upon the docket in the office of the Secretary of State of North Carolina in the manner and form prescribed by this article. (1947, c. 891, s. 6.)

§ **120-54. Annual registration required.**—Every person, firm, corporation, or organization engaging in the activity or business prescribed in this article shall, on or before the first day of January, 1948, and annually thereafter, again cause his, her, or its name to be entered upon such docket in the manner and form prescribed in this article. (1947, c. 891, s. 7.)

§ **120-55. Exemption of newspapers, radio, political candidates, etc.** —This article shall not apply to persons, firms, corporations, or organizations who carry on such activity or business solely through the medium of newspapers, periodicals, magazines, or other like means which are or may be admitted under United States postal regulations as second-class mail matter in the United States mails as defined in Title 39, § 224, United States Code Annotated, and/or through radio, television or facsimile broadcast operations. This article shall also not apply to any person, firm, corporation, candidate in any political election campaign committee, or any committee, association, organization, or group of persons who or which have filed information as required by the Corrupt Practices Act of 1931. (1947, c. 891, s. 8.)

Chapter 121.

State Department of Archives and History.

Sec.
121-1. Name.
121-2. Executive Board.
121-3. Director; salary; removal.
121-4. Duties of the Department.
121-5. Powers of the Executive Board.
121-6. Preservation of records; copies furnished.
121-7. Custody of emergency relief administration records; use of emergency relief administration funds.

§ **121-1. Name.**—The archival and historical agency of the State of North Carolina shall be the State Department of Archives and History. (1945, c. 55.)

Editor's Note. — The 1945 amendment rewrote this chapter.

Formerly "Historical Commission." — Prior to the enactment of chapter 237 of the 1943 Session Laws, the State Department of Archives and History was known as the Historical Commission. The act provided that wherever the words "Historical Commission," "North Carolina Historical Commission," "State Historical Commission" or "Commission" are used with reference to the Historical Commission in any section of the laws of North Carolina, they shall be interpreted to mean "State Department of Archives and History," and such title shall be substituted therefor.

§ **121-2. Executive Board.** — The Department shall be governed by an Executive Board, composed of the seven persons heretofore appointed and now serving as the governing board of the Department. At the expiration of the current term of each member, his successor shall be appointed by the Governor for a term of six years and until his successor shall be appointed and qualified. Thereafter all members shall be appointed by the Governor and their terms shall be for six years and until their successors shall be appointed and qualified. Four members of the Board shall constitute a quorum. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall serve only for the unexpired term and until his successor shall be appointed and qualified. The members of the Board shall serve without salary, but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds appropriated for the maintenance of the Department. (1903, c. 767, s. 2; Rev., s. 4539; 1907, c. 714, s. 1; C. S., s. 6141; 1941, c. 306; 1943, c. 237; 1945, c. 55.)

§ **121-3. Director; salary; removal.**—The Executive Board shall elect a Director of the Department whose duty it shall be, under the supervision of the Board, to direct and administer the work and activities of the Department as defined and specified by law. The Director shall have authority, with the approval of the Board, to make rules and regulations covering the administration and use of the materials in the custody of the Department. He shall serve at a salary to be fixed by the Board and approved by the Budget Bureau. The Board, after proper notice and hearing, may remove the Director from office for neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The Director may employ such other qualified persons as may be needed to perform the work and carry out the duties of the Department, as defined by law. (1945, c. 55.)

§ **121-4. Duties of the Department.**—The following shall be the duties of the Department:

(1) To preserve and administer such public archives as shall be transferred to its custody, and to collect, preserve, and administer private and unofficial historical records and relics relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials from deterioration, mutilation, loss, or destruction, and, when feasible, shall collate, classify, and file them according to approved archival practices, and shall permit them, at reasonable times and under

the supervision of the Department, to be inspected, examined, or copied: Provided, any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions;

(2) To promote and encourage throughout the State the preservation and proper care of archives, historical manuscripts, and other historical materials;

(3) To encourage and assist in the proper marking and preservation of places of importance in the history of the State;

(4) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department;

(5) To maintain a historical museum, to collect and preserve therein artifacts, curios, relics, and any other objects whatsoever which are of historical significance to North Carolina, and when feasible to display such objects. The museum shall be free to all visitors at reasonable times to be determined by the Department;

(6) To make to the Governor a biennial report of its receipts and expenditures, its activities and its needs, including recommendations for improving and broadening its services to the State, to be transmitted by the Governor to the General Assembly;

(7) To co-operate with and assist, insofar as practicable, historical and other organizations engaged in activities in the fields of North Carolina archives and history. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C. S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55.)

Cross Reference.—As to official records of inoperative boards and agencies, see § 143-268.

§ **121-5. Powers of the Executive Board.**—The following shall be the powers of the Board:

(1) To adopt a seal for use in official business;

(2) To adopt rules for its own government not inconsistent with the provisions of the laws of the State of North Carolina;

(3) To fix a reasonable price for any of its publications and to devote the revenue arising from such sales to the work of the Department;

(4) To control the expenditure of such funds as may be appropriated for the Department subject to the provisions of the Executive Budget Act;

(5) To accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Board may either expend both the principal and interest of any gift or bequest or may invest such funds, in whole or in part, in such securities as those in which the State Sinking Fund may be invested. (1907, c. 714, s. 3; C. S., s. 6143; 1935, c. 40; 1943, c. 237; 1945, c. 55.)

Cross Reference.—As to investment of State Sinking Fund, see § 142-34.

§ **121-6. Preservation of records; copies furnished.** — Any State, county, town, or other public official is hereby authorized and empowered to turn over to the Department any State, county, town, or other public records no longer in current official use, and the Department is authorized in its discretion to accept such records, and having done so, shall provide for their administration and preservation. When such records have been thus surrendered, photographs, photocopies, microfilms, typescripts, manuscripts, or other copies of them shall be made and certified by such person or persons as may be authorized by the Executive Board for this purpose, under the seal of the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department, and the Department may charge reasonable fees for such copies.

When the custodian of official State records certifies to the Director of the State Department of Archives and History that such records have no further use or value for official or administrative purposes and when the State Department of Archives and History states that such records appear to have no further use or value for historical research or other scholarly purposes, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, town, or other governmental agency certifies to the State Department of Archives and History that such records have no further use or value for official business and when the Director of the State Department of Archives and History states that such records appear to have no further use or value for historical research or other scholarly purposes, then such records may be authorized by the governing body of said county, city, town, or other governmental agency to be destroyed or otherwise disposed of by the agency having custody of them. The Executive Board of the Department is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. (1907, c. 714, s. 5; C. S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55.)

§ 121-7. Custody of emergency relief administration records; use of emergency relief administration funds.—The emergency relief administration records of North Carolina shall be turned over to the State Department of Archives and History to be arranged, classified, and made available for public investigation under the rules and regulations of said Department in accordance with the other provisions of this law. When the Department deems it advisable, microfilms, photocopies, or other copies of these records may be made and preserved in lieu of the original records, which may thereupon be destroyed or otherwise disposed of.

For the purpose of carrying out the provisions of this section the Governor and Council of State shall allot the remaining funds granted to the State of North Carolina for the emergency relief administration or any such funds hereafter accruing from claims, collections, or otherwise, to the State Department of Archives and History, to be used in arranging, classifying, microfilming, photocopying or otherwise copying, and making available to the public the said records in accordance with the purpose of the funds. The said funds are to be disbursed in accordance with and under the terms of the Executive Budget Act.

Any balance remaining in the said funds after these records are arranged, classified, and made available to the public by the State Department of Archives and History shall revert to the State Board of Charities and Public Welfare. (1941, c. 252; 1943, c. 237; 1945, c. 55.)

Chapter 122.

Hospitals for the Mentally Disordered.

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ARTICLE 1.

Organization and Management.

§ **122-1. Incorporation and names.**—The hospital for the mentally disordered, located near Morganton, shall be and remain a corporation under this name: The State Hospital at Morganton. The hospital for the mentally disordered, located near Raleigh, shall be and remain a corporation under this name: The State Hospital at Raleigh. The hospital for the mentally disordered, located near Goldsboro, shall be and remain a corporation under this name: The State Hospital at Goldsboro. The North Carolina Hospitals Board of Control shall be authorized to acquire property and to establish, operate and maintain thereon a hospital or institution and to exercise with respect to such hospital or institution the same property rights and powers as are exercised by it with respect to the State hospitals above referred to. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C. S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2.)

Cross Reference. — As to Camp Butner Hospital, see §§ 122-92 through 122-98.

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane." Prior to section 7 of the amendatory law the title of this chapter was "Hospital for the Insane."

The 1947 amendment inserted the fourth sentence relating to Hospitals Board of Control.

Chapter 537 of Session Laws 1947, which amended or inserted various sections of this article, provides in section 1: "The purposes of this act shall be to authorize the North Carolina Hospitals Board of control to acquire Camp Butner to establish there an institution similar to the other State hospitals and a colony of feebleminded. To authorize the transfer there of patients and children from the other institutions under the North Carolina Hospitals Board of Control. To authorize the transfer of patients or inmates between the institutions under the control of the North Carolina Hospitals Board of Control, and to authorize rules and regulations in regard to admission of persons to these institutions. To simplify the commitment laws for State hospitals; also to provide for release, discharge and termination of commitment of patients. To authorize the North Carolina Hospitals Board of Control to establish requirements for care in State Hospitals of this State and to make reciprocal agreements with other states in this regard, and to authorize the interstate transfer of mental patients. To provide a means to obtain authority for emergency life saving operations on inmates of State Institutions, when the family cannot be reached and permission obtained."

§ **122-1.1. Authority to establish other mental health facilities; treatment of alcoholism.** — The North Carolina Hospitals Board of Control shall be and hereby is empowered to set up on property now held or hereafter acquired mental health facilities for the care and treatment of persons suffering from alcoholism. It is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the maintenance of these persons. The North Carolina Hospitals Board of Control may itself operate such facilities directly, or in co-operation with the State Board of Alcoholic Control, or may delegate such operation. The State Board of Health and the State Department of Public Welfare shall act in an advisory capacity in the operation of these facilities. (1949, c. 1206, s. 1.)

Editor's Note. — As to alcoholic rehabilitation fund, see Session Laws 1949, c. 1206, s. 2.

§ **122-2. Power to acquire and hold property.**—The State Hospital at Morganton, the State Hospital at Goldsboro, and any institution established, operated and maintained by the North Carolina Hospitals Board of Control, may each acquire and hold, for the purpose of its institution, real and personal property by devise, bequest, or by any manner of gift, purchase or conveyance whatsoever. (1899, c. 1, s. 2; Rev., s. 4543; C. S., s. 6152; 1947, c. 537, s. 3.)

Editor's Note. — The 1947 amendment deleted the former reference to the State Hospital at Raleigh and inserted the words "and any institution established, operated and maintained by the North Carolina Hospitals Board of Control."

§ **122-2.1. Power to acquire and hold property conveyed by federal government.**—The North Carolina Hospitals Board of Control shall be and is authorized and empowered to accept, acquire and hold any real or personal property conveyed to it by an agency of the federal government with such reversionary restrictions imposed upon it by federal statute. The North Carolina Hospitals Board of Control may use and maintain such property in the same manner as if it held title in fee simple, and may construct such buildings upon it as are necessary to accomplish the purposes of the institution. (1947, c. 537, s. 4.)

§ **122-3. Division of patients among the several institutions under the North Carolina Hospitals Board of Control.**—The State Hospital at Raleigh and the State Hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of white mentally disordered persons of the State, and the State Hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment for the colored mentally disordered, epileptic, feeble-minded, and inebriate of the State.

White epileptics shall be admitted to the State Hospital at Raleigh as now provided by law, and may by action of the North Carolina Hospitals Board of Control be transferred to another institution under the North Carolina Hospitals Board of Control when in the opinion of the Board such is in the best interests of the epileptic patients and the institutions.

The North Carolina Hospitals Board of Control shall have the authority to establish rules and regulations not contrary to law governing the admission of persons to any State hospital or other institution under its control which is now or may be established. Clerks of superior court of the several counties of the State may make commitments to such institutions in the same manner now provided by law for the several State hospitals and Caswell Training School.

The North Carolina Hospitals Board of Control is hereby given authority to admit certain classes of patients to any one of the institutions under its control and shall notify the clerks of the superior court of its action. Sections 116-129 through 116-137 shall apply to any colonies for feeble-minded persons and to feeble-minded persons held in any colonies providing that § 116-135 shall apply only to Caswell Training School. (C. S., s. 6153(a); 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5.)

Editor's Note. — The 1933 amendment placed colored epileptic and feeble-minded under the jurisdiction of the State Hospital at Goldsboro. The 1945 amendment substituted "mentally disordered" for "insane." And the 1947 amendment rewrote this section as previously amended.

§ **122-4. Division of territory among the several institutions under the North Carolina Hospitals Board of Control.**—It shall be the duty of the North Carolina Hospitals Board of Control to designate territories for the State Hospital at Raleigh, the State Hospital at Morganton and any State hospitals or institutions now or hereafter established for the admission of the white mentally disordered persons of the State, with authority to change said territories when deemed necessary. It shall notify the clerks of superior court of the counties of the territories designated and of any change of these territories. (C. S., s. 6153(a); 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6.)

Editor's Note. — The 1947 amendment rewrote this section as changed by previous amendments.

§ **122-5. Care and treatment of Indians in mental hospitals.**—The authorities of the State Hospital at Raleigh and the State Hospital at Morganton may also receive for care and treatment mentally disordered, epileptic, and inebriate Indians who are resident within the State, and who may, within the discretion of the superintendent, be assigned to any of the wards of the hospitals. (1919, c. 211; C. S., s. 6154; 1945, c. 952, s. 10; 1947, c. 537, s. 7.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane," and the 1947 amendment rewrote the section.

§ **122-6. Epileptics cared for at Raleigh, Goldsboro and other hospitals.**—Whenever it becomes necessary for any person of this State afflicted with the disease known as epilepsy to be confined or to receive hospital treatment, such person shall be committed by the clerks of superior court of the several counties in the manner now provided by law for the commitment of mentally disordered persons to the several hospitals for the mentally disordered. Commitment of negro epileptic persons shall be made to the State Hospital at Goldsboro. Commitment of white epileptic persons shall be made to the State Hospital at Raleigh. The superintendents of the State hospitals to which such epileptic persons have been committed or transferred shall receive, care for, maintain and treat such persons as are afflicted if necessary to prevent them from becoming public charges, to the extent of the facilities of the hospital.

Charges for the patients shall be made in the same manner as now provided by law for care of mentally disordered persons. (1909, c. 910, ss. 1, 2; C. S., s. 6155; 1945, c. 952, s. 11; 1947, c. 537, s. 8.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane," and the 1947 amendment rewrote the section.

§ **122-7. Management of certain institutions by unified board of directors; appointment; quorum; term of office.**—The following institutions of this State shall be under the management of one board of directors composed of fifteen members, all of whom shall be appointed by the Governor of North Carolina: The State Hospital at Raleigh, the State Hospital at Morganton, the State Hospital at Goldsboro, and the Caswell Training School at Kinston. In order that all sections of the State shall have representation on said board, the Governor shall name one member from each congressional district of the State and three members at large on said board. The board of directors to be named from congressional districts shall be divided into four classes of three directors each, the first class to serve for a period of one year, the second class to serve for a period of two years, the third class to serve for a period of three years, the fourth class to serve for a period of four years, and the three directors at large to serve for a period of four years, and at the expiration of their respective terms of office all appointments shall be for a term of four years, except such as are made to fill unexpired terms. Eight directors shall constitute a quorum.

Members of the board shall serve for terms as prescribed above, and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1921, c. 183, s. 2; C. S., s. 6159(a); 1925, c. 306, s. 3; 1943, c. 136, s. 2; 1945, c. 925, s. 1.)

Editor's Note. — The 1943 amendment rewrote this section to provide for a unified board of directors instead of separate boards for each institution. And the 1945 amendment rewrote the first paragraph, omitting former provisions relating to the Senate's confirmation of the Governor's appointments.

For comment on the 1943 amendment to this and the two following sections, see 21 N. C. Law Rev. 353.

Consent of Senate to Appointments. — Under this section prior to the 1945 amendment, the consent and approval of the Senate was required for a valid appointment by the Governor to fill unexpired terms as well as full terms. State v. Croom, 167 N. C. 223, 83 S. E. 354 (1914), overruling State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899), and distinguishing Boynton v. Heartt, 158 N. C. 488, 78 S. E. 470 (1912).

§ **122-8. Powers and duties of unified board of directors.**—Wherever in any of the sections of this chapter and in the sections under article twelve, chapter 116, the board of directors or board of trustees is referred to, it shall be construed that the unified board of directors of the said institutions shall have all the powers conferred and duties imposed heretofore upon the separate boards of directors or boards of trustees of the several institutions herein mentioned and said powers and duties shall be exercised and performed as to each of the institutions by the unified board of directors herein provided for; and the said board shall be responsible for the management of the said institutions and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, subject to the provisions of the Executive Budget Act, and said board shall make an annual report to the Governor, and oftener if called for by him, of the condition of each of the said institutions and shall make biennial reports to the Governor, to be transmitted by him to the General Assembly, of all moneys received and disbursed by each of the said institutions. Wherever the words "board of directors" or "board of trustees" are used in any of the laws of this State with reference to the institutions enumerated in § 122-7, the same shall mean the unified board of directors provided for in § 122-7. (1921, c. 183, s. 3; C. S., s. 6159(b); 1943, c. 136, s. 3.)

Editor's Note. — The 1943 amendment rewrote this section.

§ **122-9. Building committee; selection; duties.**—It shall be the duty of the board of directors herein provided for to select and appoint from its number a building committee, who shall be specially charged with the duty of supervision of the buildings to be built or repaired from appropriations made to said institutions by the General Assembly of this State. (1921, c. 183, s. 4; C. S., s. 6159(c); 1943, c. 136, s. 4.)

Editor's Note. — Prior to the 1943 amendment there was a building committee for each institution.

Architect Not State Employee. — An architect selected by the building committee under the authority conferred by this section, and who is to bear all the expenses incidental to carrying out his work, being paid on the basis of a percentage of the moneys expended, is an independent contractor and not a State employee. Underwood v. Com'r of Internal Revenue, 56 F. (2d) 67 (1932).

§ **122-10. A garden provided for the Executive Mansion.**—The board of directors is authorized and directed to set apart two acres of land belonging to the State Hospital at Raleigh to be used as a garden for the Executive Mansion. They are further authorized to have such garden cultivated, the actual expense of cultivation to be paid by the Governor. (1917, c. 171; C. S., s. 6160.)

§ **122-11. Meetings of directors.**—The board of directors shall convene annually at each of the institutions enumerated in § 122-7 at a time to be fixed by such board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (1899, c. 1, s. 8; Rev., s. 4550; 1917, c. 150, s. 1; C. S., s. 6161; 1943, c. 136, s. 5.)

Editor's Note—Prior to the 1943 amendment the former boards were required to meet in April and at such other times as they should appoint, also to make reports to the General Assembly.

§ **122-11.1. Organization of board; officers.**—The said board of directors is hereby authorized and given full power to meet and organize and from their number select a chairman and to elect a secretary who may or may not be a member of the board. (1943, c. 136, s. 6.)

§ **122-11.2. Superintendent of Mental Hygiene.**—The board of directors is hereby authorized and given full power to employ a general Superintendent of Mental Hygiene and prescribe his duties and fix his salary. The said Superintendent shall be a person of demonstrated executive ability and a doctor of medicine who shall have had special education, training and experience in psychiatry and in the treatment of mental diseases, and he shall be a person of good character and otherwise qualified to discharge his duties. He shall be employed for a period of six years from and after the date of his selection, unless sooner removed therefrom by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no office except that he shall serve as secretary to the board of directors, if the board so orders.

The board of directors shall provide the said Superintendent with such stenographic and clerical assistance as it may deem necessary. The salary of said Superintendent and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions herein mentioned and on such prorata basis as the board of directors shall in their judgment fix and determine. Upon the request of the board of directors the State Board of Public Buildings and Grounds shall provide suitable office space in the city of Raleigh for said Superintendent. (1943, c. 136, s. 7; 1945, c. 925, s. 2.)

Editor's Note. — The 1945 amendment increased the period of employment from two to six years.

§ **122-11.3. Business manager for institutions.**—The board of directors is hereby authorized and given full power to employ a general business manager for the institutions enumerated in § 122-7, and to fix his salary. Subject to the supervision, direction and control of the board of directors, the said general business manager shall perform the duties set out in this section and all other duties which the board of directors may prescribe. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. Under the direction of said board, said general manager shall have full supervision over the fiscal management and over the management and control of the physical properties and equipment of the institutions enumerated in § 122-7. All personnel or employees of said institutions engaged in any aspect of the business management or supervision of the properties or equipment of any of said institutions shall be responsible to and subject to the supervision and direction of said general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The said general business manager shall be employed for a period of six years from and after the time of his selection, unless sooner removed by the board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

The board of directors shall provide the said general business manager with such stenographic and clerical assistance as it may deem necessary. The salary of said business manager and the expenses incident to equipping and maintaining his office, including stenographic and clerical assistance, shall be paid out of the appropriations made to the several institutions hereinbefore mentioned and on such pro-rata basis as the board of directors shall in its judgment fix and determine. Upon the request of the board of directors the State Board of Public Buildings and Grounds shall provide suitable office space in the city of Raleigh for said general business manager in conjunction with the office space provided for the General Superintendent of Mental Hygiene hereinbefore provided for. (1943, c. 136, s. 7½; 1945, c. 925, s. 3.)

Editor's Note. — The 1945 amendment increased the period of employment in the second paragraph from two to six years.

§ **122-11.4. Monthly reports to general Superintendent of Mental Hygiene.**—The superintendent of each of said institutions shall make monthly reports to the general Superintendent of Mental Hygiene in such manner and detail as the board of directors may prescribe. (1943, c. 136, s. 8.)

§ **122-11.5:** Repealed by Session Laws 1945, c. 925, s. 4.

§ **122-11.6. Outpatient mental hygiene clinics.**—For the purpose of advising with and counseling, and, if need be, of treating patients on furlough or parole from any of said institutions, and serving such other citizens of the State, in the need of psychiatric advice or guidance, as may be referred thereto by a physician or any local governmental welfare or health department, the board of directors shall be empowered to establish as soon as practicable a system of outpatient mental hygiene clinics under the supervision of the Superintendent of Mental Hygiene. Said clinics shall be held at each of the institutions enumerated in § 122-7. The superintendents of each of said institutions shall designate one or more members of his staff to conduct or assist in conducting said clinics. Additional outpatient clinics may be held at the medical schools within the State and at community and public hospitals on such conditions as the board of directors and the medical schools and said hospitals may fix and determine. (1943, c. 136, s. 11.)

§ **122-11.7. Compensation of board of directors.**—The members of the board of directors shall be paid the sum of seven dollars ($7.00) per day and actual expenses while engaged in the discharge of their official duties. (1943, c. 136, s. 12.)

§ **122-11.8. Title of board of directors.**—The board of directors provided for in § 122-7 shall be known and designated as "North Carolina Hospitals Board of Control." (1943, c. 136, s. 13.)

§ **122-12. Bylaws and regulations.**—The board of directors shall make all necessary bylaws and regulations for the government of each of said institutions, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation. (1899, c. 1, s. 14; Rev., s. 4551; 1917, c. 150, s. 1; C. S., s. 6162; 1943, c. 136, s. 10.)

Editor's Note. — By virtue of the 1943 amendment the first part of this section was rephrased.

This section declares the policy of the State with respect to the operation of the State Hospital for the Insane at Raleigh as well as for the operation of similar institutions. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **122-13. Transfer of patients from one hospital to another; transfer of funds.**—The North Carolina Hospitals Board of Control is authorized to make such rules and regulations as in its discretion may seem best for the transfer of patients from one State hospital or institution under its control to another State hospital or institution under its control; and it is further authorized and empowered to transfer from one State hospital for the mentally disordered any funds appropriated for permanent improvement or maintenance, if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; C. S., s. 6163; 1947, c. 537, s. 9.)

Editor's Note. — The 1947 amendment rewrote this section.

§ **122-14. Delivery of inmates to federal agencies.**—The directors and superintendents of the State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States government or to the representatives or agents of such Veterans Bureau or other department or bureau of said government, all inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts of acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 623, s. 1.)

Editor's Note. — The 1945 amendment made this section applicable to the State Hospital at Morganton, and the 1947 amendment struck out the word "insane" formerly appearing before the word "inmates" in line seven.

The words "receipts of acknowledgments" in line twelve were apparently intended to read "receipts or acknowledgments".

Cited in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **122-15. Transfer of inmates to general wards.**—The directors and superintendents of the State Hospital at Raleigh and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer from the wards in said hospitals set apart for the dangerous insane to the general wards any of the inmates or prisoners therein who, in the judgment of said directors and superintendents, have reached such a state of improvement in their mental condition as to justify such transfer. (1925, c. 51, s. 2.)

§ **122-16. Board may make ordinances; penalties for violation.**—Authority is hereby conferred upon the board of directors of the State hospitals for the insane and upon the board of directors and superintendent of the North Carolina School for the Deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the board of directors shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (1899, c. 1, s. 54; 1901, c. 627; Rev., ss. 3695, 4559; 1915, c. 14, s. 2; 1917, c. 150, s. 1; C. S., s. 6164.)

§ **122-17. Executive committee appointed.** — The board of directors shall, out of their number, appoint five members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the board of directors may delegate to them. (1899, c. 1, s. 6; Rev., s. 4548; 1917, c. 150, s. 1; C. S., s. 6165; 1945, c. 925, s. 6.)

Editor's Note. — The 1945 amendment increased the members from three to five.

§ **122-18. State Treasurer to act as treasurer; payment of funds.** —The State Treasurer shall be treasurer of said corporations. The State Treasurer shall keep all accounts of the institutions, and shall pay out all moneys upon the warrant of the respective superintendents, countersigned by two members of the board of directors, under such rules and regulations as the board of directors may establish. (1899, c. 1, s. 11; Rev., s. 4553; 1917, c. 150, s. 1; C. S., s. 6166.)

Cross Reference.—As to State Treasurer being ex officio treasurer of certain institutions, see § 147-72.

§ **122-19. Application of funds belonging to hospitals.** — All moneys and proceeds of property given to any hospitals, and all moneys arising from the sale of any real estate which may be owned by such hospital shall be paid into the State treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations from the State treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the board of directors may determine. An account of the proceeds of all such income and its expenditure shall be carefully kept and published in the report to the General Assembly. (1899, c. 1, s. 34; Rev., s. 4552; C. S., s. 6167.)

§ **122-20. Board of Charities and General Assembly, visitors; superintendent reports, to whom.**—The State Board of Charities and Public Welfare and the members of the General Assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the State Board of Charities to visit the hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the General Assembly, with such suggestions and remarks as they may think proper. (1899, c. 1, s. 37; Rev., s. 4554; 1917, c. 150, s. 1; C. S., s. 6168.)

§ **122-21. Fiscal year.**—The close of the fiscal year shall be that established for all State agencies. (1899, c. 1, s. 38; Rev., s. 4558; C. S., s. 6169; 1947, c. 537, s. 10.)

Editor's Note. — The 1947 amendment rewrote this section.

§ **122-22. Court may remit penalties imposed under this chapter.**— Whenever suit shall be brought against a sheriff or board of county commissioners for the recovery of a penalty prescribed for doing an act forbidden, or failure to do any act required by this chapter, the judge or justice of the peace before whom the action is tried may order so much of said penalty to be remitted as in his judgment should be remitted to meet the ends of justice, and he shall enter up judgment for the amount of the penalty, to be discharged by the payment of such a sum as he may think just, and the costs of the action. In fixing the amount to be remitted (if the judge or justice should think the remission of any part proper), he shall consider the costs and expenses that the plaintiff may have been put to, and he should also consider the conduct of the defendants; and there ought to be no remission when the act of the defendants is wanton or contumacious, or is grossly negligent. (1899, c. 1, s. 57; Rev., s. 4557; C. S., s. 6170.)

§ **122-23. Assisting inmate to escape; misdemeanor.** — If any person shall assist any inmate of any State hospital to escape therefrom he shall be guilty of a misdemeanor. (1899, c. 1, s. 53; Rev., s. 3694; C. S., s. 6171.)

Article 2.

Officers and Employees.

§ **122-24. Directors and superintendents not personally liable.**—No director or superintendent of any State hospital shall be personally liable for any act or thing done under or in pursuance of any of the provisions of this chapter. (1899, c. 1, s. 31; Rev., s. 4560; C. S., s. 6172.)

Liability for Wrongful Acts of Discharged Patient.—The directors and superintendent of a hospital for the insane acting under the provisions of section 122-67, in discharging or releasing a patient therefrom, cannot be held responsible in damages by the subsequent killing by such patient of another under a charge of negligence. Bollinger v. Rader, 151 N. C. 383, 66 S. E. 314 (1909).

§ **122-25. Superintendent; appointment, term of office, qualifications, and removal.**—The board of directors shall appoint a superintendent of each of said institutions and prescribe his duties. He shall be a skilled physician, educated to his profession, of good moral character, of prompt business habits, and of kindly disposition. He shall hold office for six years from and after his appointment, unless sooner removed by said board, who may, for infidelity to his trust, gross immorality, or incompetency to discharge the duties of his office, fully proved and declared, and the proofs thereof recorded in the book of their proceedings, remove him and appoint another in his place. (1899, c. 1, s. 69; Rev., s. 4561; 1917, c. 150, s. 1; C. S., s. 6173.)

§ **122-26. Powers of superintendent.** — The superintendent of each hospital shall exercise exclusive direction and control over all the subordinate officers and employees engaged in the service and labors of his hospital, and he may discharge such as have been employed by himself or his predecessors, and shall report to the board of directors the misconduct of all subordinates. (1899, c. 1, s. 13; Rev., s. 4562; 1917, c. 150, s. 1; C. S., s. 6174.)

§ **122-27. Superintendent to notify of escape or revocation of probation of inmate.** — When any inmate of a State hospital who has been released therefrom on probation has breached the conditions of his probation or when any inmate has escaped from a State hospital, the superintendent of the hospital shall immediately notify the committing physicians and the sheriff and clerk of court of the county in which such inmate is located at the time of such escape or breach of the conditions of probation. Upon the receipt of such notice, it shall be the duty of the sheriff to return such inmate to the hospital from which he has escaped or has been released on probation. The expense of returning such inmate shall be borne by the county of such inmate's legal settlement. (1899, c. 1, s. 27; Rev., s. 4563; C. S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12.)

Editor's Note. — The 1945 amendment rewrote this section.

§ **122-28. Assistant physicians; appointment and removal.**—Each superintendent shall appoint one or more assistant physicians, the number to be fixed by the board of directors. The superintendent shall have the power to prescribe the duties of each assistant physician, and may suspend him, or any employee, for thirty days, for insubordination, immorality, neglect of duty, or incompetence, and, by and with the advice of the executive committee of the board of directors, may remove such assistant physician, or employee, for like cause. Each assistant physician shall hold his office for two years, unless removed for cause, which shall be specified and the action of the superintendent and executive committee reported to the board of directors, which shall record the same on its minutes. (1899, c. 1, s. 10; Rev., s. 4564; C. S., s. 6176.)

§ **122-29. Steward and matron; appointment and removal.**—Each superintendent shall appoint a steward, and if he shall think proper to do so, a matron also, who shall hold their places for one year, unless sooner suspended or removed by the superintendent or board of directors for good cause, in which case their successors shall be appointed for the unexpired terms of those removed. The method of procedure for the suspension and removal of assistant physicians, contained in the preceding section, shall be followed in the suspension and removal of any steward or matron. (1899, c. 1, s. 11; Rev., s. 4565; C. S., s. 6177.)

§ **122-30. Steward to give bond.**—The steward, before entering upon the discharge of his duties, shall execute to the hospital a bond in the sum of two thousand five hundred dollars, with sureties, to be approved by the board of directors, conditioned for the faithful administration of his duties and the proper accounting for and disbursement of all money and property coming into his hands. (1899, c. 1, s. 11; Rev., s. 4566; C. S., s. 6178.)

§ **122-31. Salaries of superintendent and employees.**—The board of directors shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said board. The salaries shall not be diminished during the term of the incumbents. The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit. (1899, c. 1, s. 12; Rev., s. 4567; 1917, c. 150, s. 1; C. S., s. 6179.)

§ **122-32. Directors to keep record of proceedings; clerk.**—The board of directors shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the General Assembly. (1899, c. 1, s. 36; Rev., s. 4568; 1917, c. 150, s. 1; C. S., s. 6180.)

§ **122-33. Superintendent may appoint employees as policemen, who may arrest without warrant.**—The superintendent of each hospital, the superintendent of the North Carolina School for the Deaf and Dumb, and the superintendent of the Caswell Training School, are each hereby empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the State law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207.)

§ **122-34. Oath of special policemen.**—Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the board of directors. The oath of office shall be as follows:
State of North Carolina, ... County.

I, ..., do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the State hospital at ...., according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this .... day of ...., A. D. ....
(1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C. S., s. 6182.)

§ **122-35. Volunteer firemen among employees rewarded.**—The board of directors shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the State Firemen's Relief Fund. (1899, c. 1, s. 59; Rev., s. 4571; 1917, c. 150, s. 1; C. S., s. 6183.)

ARTICLE 3.

Admission of Patients.

§ **122-36. Persons entitled to immediate admission if space available.** — Any resident of North Carolina who has been legally adjudged by a clerk of court or other properly authorized person in accordance with the provisions of this chapter to be mentally disordered or a proper person to be committed to a State hospital for observation shall, if space is available, be entitled to immediate admission in the State Hospital at Morganton, the State Hospital at Raleigh, or the State Hospital at Goldsboro, in accordance with the principles of division of race and residence prescribed in this chapter. No resident of this State who has been legally adjudged mentally disordered or a proper subject for observation and who has been presented to the superintendent of the proper State hospital for the mentally disordered as provided in this article, shall be refused admission thereto if space is available, but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law.

Upon the admission of any such person, the superintendent of the institution shall notify the clerk of the superior court who has committed such person as mentally disordered, or as a proper subject for observation. (1919, c. 326, ss. 1, 6; C. S., s. 6184; 1945, c. 952, s. 13.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane," made the right to immediate admission dependent upon space being available, and added the second paragraph.

§ 122-37. Mental defectives admitted.—Any person with mental deficiency who in addition is suffering from epilepsy or a mental disorder may be admitted to the proper State hospital for the mentally disordered. Mental defective delinquents and low grade idiots who are unable to look after their own persons may be admitted to the Caswell Training School. (1899, c. 1, s. 18; Rev., s. 4572; C. S., s. 6185; 1933, c. 342, s. 2; 1945, c. 952, s. 14.)

Cross Reference.—As to training school for feeble-minded negro children, see §§ 116-142.1 through 116-142.10.

Editor's Note. — The 1945 amendment rewrote this section.

§ 122-38. Priority given to indigent patients; payment required from others.—In the admission of patients to any State hospital, priority of admission shall be given to indigent persons; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients, upon proper compensation, based upon the ability of the patient or his estate to pay. Where the clerk of court or the superintendent of the hospital has doubt as to the indigency of the mentally disordered person, he shall refer the question to the county department of public welfare for investigation. If any patient of any State hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the State hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death. (1899, c. 1, s. 44; Rev., s. 4573; 1915, c. 254; 1917, c. 150, s. 1; C. S., s. 6186; 1945, c. 952, s. 15.)

Editor's Note. — The 1945 amendment substituted "persons" for "insane" in the first sentence, and "patient" for "inmate" in the fourth sentence. The amendment also rewrote the second sentence and inserted the third sentence.

Meaning of "Indigent Persons." — The term "indigent insane" [now "indigent persons"], within the meaning of this section, includes all those who have no income over and above what is sufficient to support those who may be legally dependant on the estate. In re Hybart, 119 N. C. 359, 25 S. E. 963 (1896).

Financial Status at Time of Admission Need Not Be Determined.—It is not required under this section that the directors of the hospital finally determine the status of a patient at the time of his admission, the financial status of the patient being subject to the vicissitudes of fortune. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

Free Admission of Person Able to Pay Expenses. — Under this section an insane person able to pay expenses at the State Hospital is not entitled to free admission. Hospital v. Fountain, 128 N. C. 23, 38 S. E. 34 (1901).

§ 122-39. Only bona fide residents entitled to care in State mental hospitals.—No clerk of superior court shall commit to any State hospital any mentally disordered person known to be a resident of another state or whose residence is unknown unless he shall state that the mentally disordered person is known to be a resident of another state or that his residence is not known, and he shall give all available information concerning places in which he has been recently living.

The legal residence of a person as to his being entitled to mental hospital care shall be determined between this and the other state or states as elsewhere provided.

No person who shall have removed into this State while mentally disordered or while under commitment to a mental hospital in any other state, nor any person not a resident of North Carolina but under commitment to any mental institution, public or private, in this State shall be considered as a resident; and no length of residence in this State of such a person, while mentally disordered or under commitment, shall be sufficient to make him a resident of this State or entitled to State mental hospital care. (1899, c. 1, s. 18; Rev., ss. 3591, 4587; C. S., s. 6187; 1945, c. 952, s. 16; 1947, c. 537, s. 11.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane." And the 1947 amendment rewrote the section.

§ **122-40. Findings as to residence reported; commitment.** — In every examination of an alleged mentally disordered person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged mentally disordered person is a resident of this State, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged mentally disordered person and the clerk or the assistant clerk of court shall be of the opinion that the alleged mentally disordered person is a resident of this State, within the meaning of the law, and in all other respects would be a proper person to be committed as mentally disordered or for observation, he shall state that he was unable to ascertain the legal residence of the alleged mentally disordered person and shall commit him to the proper State hospital in accordance with the principles of divisions as to race and residence prescribed in this chapter. (1899, c. 1, s. 18; Rev., s. 4588; C. S., s. 6188; 1945, c. 952, s. 17.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" in the first sentence and rewrote the second sentence.

§ **122-41. County of settlement.** — For the purposes of this chapter, the county of settlement of an alleged mentally disordered person shall be the county of his actual residence at the time of his commitment to the State hospital, notwithstanding where such person may have been temporarily out of the county of settlement, in a hospital, or under court order an inmate of some other State institution at the time of his commitment to a State hospital, the county of residence shall not have been changed by his being temporarily out of his county, in a hospital, or by his confinement under court order.

The provisions of this section shall not be construed as entitling a person to care and treatment in a mental hospital unless he is a bona fide citizen and resident of this State, and was so before mental disease became manifest. (1899, c. 1, s. 28; Rev., s. 4574; C. S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12.)

Editor's Note. — The 1947 amendment rewrote this section as changed by the 1945 amendment.

§ **122-42. Affidavit of mental disorder and request for examination.** —When it appears that a person is suffering from some mental disorder and is in need of observation or admission in a State hospital, some reliable person having knowledge of the facts shall make before the clerk of the superior court of the county in which alleged mentally disordered person is or resides, and file in writing, on a form approved by the North Carolina Hospitals Board of Control, an affidavit that the alleged mentally disordered person is in need of observation or admission in a hospital for the mentally disordered, together with a request that an examination into the mental condition of the alleged mentally disordered person be made.

This affidavit may be sworn to before the clerk of the superior court, or the deputy clerk of court. (1899, c. 1, s. 15; Rev., s. 4575; C. S., s. 6190; 1945, c. 952, s. 19; 1947, c. 537, s. 13.)

Editor's Note. — Prior to the 1945 amendment the affiant was required to be a resident of the county in which the alleged insane person resided.

The 1947 amendment rewrote this section which formerly set out the form of affidavit. Subsequently Session Laws 1947, c. 623, s. 2, purported to amend such omitted form.

§ **122-43. Clerk to issue an order for examination.**—When an affidavit and request for examination of an alleged mentally disordered person has been made, or when the clerk of the superior court has other valid knowledge of the facts of the case to cause an examination to be made, he shall direct two physicians duly licensed to practice medicine by the State and not holding any office or appointment except advisory or consultative in the hospital to which commitment may be made, to examine the alleged mentally disordered person or shall have him brought to them in order to determine if a state of mental disorder exists and if it warrants commitment to one of the State hospitals or institutions for the mentally disordered. If the said physicians are satisfied that the alleged mentally disordered person should be committed for observation and admission into a hospital for the mentally disordered, they shall sign an affidavit to that effect on a form approved by the North Carolina Hospitals Board of Control.

This affidavit may be sworn to before the clerk of the superior court, the assistant clerk of the superior court, or the deputy clerk of court, or a notary public. (1899, c. 1, s. 15; Rev., s. 4576; C. S., s. 6191; 1945, c. 952, s. 20; 1947, c. 537, s. 14.)

Editor's Note. — The 1945 amendment rewrote this section.

The 1947 amendment also rewrote this section which formerly set out the form of affidavit. Subsequently Session Laws 1947, c. 623, s. 3, purported to amend such omitted form.

§ **122-44. Incarceration of persons believed insane, pending judicial determination.**—If the affidavit, required to be filed by § 122-42, states that such insane person's condition is such as to endanger either himself or others, or if the sheriff, or other person serving the warrant, believes that said insane person's condition is such as to endanger either himself or others, the clerk shall order such insane person to be incarcerated in the county jail until such person is judicially declared insane or sane. (1941, c. 179.)

Editor's Note. — For comment on this enactment, see 19 N. C. Law Rev. 487.

§ **122-45:** Repealed by Session Laws 1945, c. 952, s. 21.

§ **122-46. Clerk to commit for observation in a hospital, for commitment, release or discharge.**—When the two physicians shall have certified that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered and after the clerk has heard all proper witnesses he shall issue an order of commitment on form approved by the North Carolina Hospitals Board of Control, which shall authorize the hospital to receive said person and there to examine him and observe his mental condition for a period not exceeding thirty days. The clerk may authorize the transfer of the said alleged mentally disordered person to the proper hospital, when notified by the superintendent that space is available.

The clerk shall transmit to the hospital information relevant to the mental condition of the alleged mentally disordered person. He shall certify as to the indigency of the mentally disordered person and any persons liable for the care of the person under §§ 35-33 or 143-117 et seq., on forms approved by the North Carolina Hospitals Board of Control. (1899, c. 1, s. 15; Rev., s. 4578; 1915, c. 204, s. 1; C. S., s. 6193; 1923, c. 144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15.)

Editor's Note. — The 1945 and 1947 amendments rewrote this section as changed by the 1923 amendment.

A jury trial is not contemplated by this section. In re Cook, 218 N. C. 384, 11 S. E. (2d) 142 (1940).

And there is no provision for an appeal from the order of the clerk to the superior court in a proceeding under this article. In re Cook, 218 N. C. 384, 11 S. E. (2d) 142 (1940).

Cited in Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937).

§ **122-46.1. Clerk may make final commitment to hospital.**—When such alleged mentally disordered person is committed to a State hospital for observation, the hospital authorities shall, at the expiration of thirty days, file with the clerk of the superior court of the county in which the alleged mentally disordered person resided, if known, if not known, with the clerk of the superior court who committed such alleged mentally disordered person for observation, a written report stating the conclusion reached by the hospital authorities as to the mental condition of the alleged mentally disordered person. Upon the basis of this report, the clerk of the superior court of the county in which the alleged mentally disordered person resided, or if such alleged mentally disordered person's residence is not known, the clerk of the superior court who committed him for observation is authorized to order said person discharged or to order him to remain at the hospital as a patient, as the facts may warrant. Any person who has been committed to any State hospital as mentally disordered as provided by law shall be and remain a charge of such State hospital until he has been discharged from said hospital or declared competent as otherwise provided by law.

At the end of the thirty-day observation period the superintendent of the State hospital in which the alleged mentally disordered person has been confined for a thirty-day period of observation may signify in writing to the clerk of the court of the county in which the alleged mentally disordered person is settled that his observation of the alleged mentally disordered person has not been completed and that a second thirty-day period of observation of the alleged mentally disordered person is requested. Whereupon the clerk of the superior court who committed the alleged mentally disordered person for observation is authorized to order said person to remain at the hospital as a patient for another thirty-day observation period. (1945, c. 952, s. 23.)

§§ **122-47 to 122-49:** Repealed by Session Laws 1945, c. 952, s. 24.

§ **122-49.1. Withdrawal of petition.**—The petitioner in proceedings to determine the mental health or mental disease of an alleged mentally disordered person may, at any time before the alleged mentally disordered person has been admitted to the particular State hospital, withdraw such petition by filing with the clerk of the superior court, in writing, a motion to this effect. The clerk with the written consent of the examining physicians is authorized to allow such motion. When such motion is allowed, the proceedings shall be deemed to be at an end. (1945, c. 952, s. 25; 1947, c. 537, s. 16.)

Editor's Note.—Prior to the 1947 amendment the petition could be withdrawn before the adjudication of mental disorder or mental health.

§ **122-50. Clerk to keep record of examinations and discharges.**—The clerk will keep a record of all examinations of persons alleged to be mentally disordered, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings when he shall have examined a person under the powers granted under this chapter, the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in article four of this chapter. (1899, c. 1, s. 17; Rev., s. 4586; C. S., s. 6197; 1945, c. 952, s. 26.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane."

§ **122-51. Fees for examination.** — The following fees shall be allowed to the officers who make the examination, and they shall be paid by the county in which the alleged mentally disordered person is settled:

To the clerk who makes the examination two dollars ($2.00) and if the clerk goes to the place where the alleged mentally disordered person is or resides, five cents (5c) a mile each way in addition. This shall cover his entire costs in taking the examination and making out the necessary papers.

To the physician or physicians called in addition to or in the absence of the county physician the sum of five dollars ($5.00). If the county physician is a salaried officer he is not allowed any fee for his services in this examination.

The sheriff shall be entitled to such fees as are now allowed by law for the service of a process of similar character. (1899, c. 1, s. 15; Rev., ss. 4580, 4581; C. S., s. 6198; 1947, c. 537, s. 17.)

Editor's Note. — The 1947 amendment rewrote this section.

§ 122-52. Superintendent of hospital notified; attendant to convey patient.—Whenever an alleged mentally disordered person shall be entitled to admission in any one of the hospitals of the State as prescribed by law, and the clerk of the superior court or other officer authorized by law to find such person mentally disordered or a proper subject for observation has so found, it shall be the duty of the clerk or other officer forthwith to notify the superintendent of the proper hospital, giving the name, race, sex and age of the patient; and it shall be the duty of such superintendent, unless said patient has been exposed to a contagious disease as hereinafter mentioned in this article, to send an attendant to bring such mentally disordered person to the hospital. Such attendant shall have all such rights as the sheriff or other officer has heretofore, and shall convey such mentally disordered person to the hospital. (1919, c. 326, s. 2; C. S., s. 6199; 1945, c. 952, s. 27.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane," and inserted the words "or a proper subject for observation."

§ 122-53. Bill of expense sent to county commissioners.—Upon the arrival of such mentally disordered person at the hospital, the superintendent shall send to the board of commissioners of the county in which such mentally disordered person had a settlement a bill covering the costs of conveying such mentally disordered person to the hospital, including any fees that would now be allowed an officer, and it shall be the duty of the board of commissioners forthwith to repay to such hospital the amount of such bill. (1915, c. 204, s. 2; 1919, c. 326, s. 3; C. S., s. 6200; 1945, c. 952, s. 28.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-54. Failure of superintendent to send attendant; sheriff to act.—If the superintendent of any hospital for the mentally disordered in this State shall, for ten days after receiving a notice as prescribed in § 122-52, fail and neglect to send an attendant, as is prescribed by § 122-52, to bring such mentally disordered person to the hospital, it shall be the duty of the sheriff of the county from which the notice was sent to bring at the expense of the county such mentally disordered person to the State hospital, whereupon it shall be the duty of the said superintendent to receive said mentally disordered person and relieve said sheriff of his care.

Each female mentally disordered patient must be accompanied to the hospital by a member of her family; if a member of her family is not available, she must be accompanied by a female designated by the county superintendent of public welfare of the county of the patient's settlement, the expenses of said female attendant to be borne by the county commissioners. (1919, c. 326, s. 4; C. S., s. 6201; 1945, c. 952, s. 29.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" and added the second paragraph.

§ 122-55. Costs of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every mentally disordered person to any hospital from any county, or of removing him from the hospital to his county, or of the return to the county of his settlement, as sane, shall be paid by the treasurer of such county, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they shall bring an action and recover the amount paid from the said person, or from the other person liable for his support and maintenance. (1899, c. 1, s. 32; Rev., s. 4555; C. S., s. 6202; 1945, c. 952, s. 30.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane."

Applied in Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937).

§ 122-56. Preparation of patient for admission to hospital.—Every sheriff or other person bringing to a hospital a patient shall see that the patient is clean, free from contagious disease and vermin, and that he has clothing proper for the season of the year, and in all cases two full suits of underclothing. (1899, c. 1, s. 24; Rev., s. 4556; C. S., s. 6203.)

§ 122-57. Commitment in case of sudden or violent mental disorder.—Whenever any citizen or resident of this State or any other state becomes suddenly or violently mentally disordered, he may be committed to the proper State hospital for the mentally disordered, private hospital, county hospital, or other suitable place, until adjudication can be made or for a period not exceeding ten days upon the affidavit of one physician not related by blood to the mentally disordered person and licensed to practice medicine in North Carolina, or by the order of the clerk of the superior court of the county in which the patient becomes suddenly or violently mentally disordered upon the application of a respectable citizen. The affidavit of the physician will be on a standard form provided by the State Hospitals Board of Control for this purpose. The physician's signature upon this form must be sworn to before a notary public or a deputy sheriff. The physician's notarized signature to the standard form provided by the State Hospitals Board of Control for the purposes enumerated in this section shall constitute authority for the temporary commitment of the alleged mentally disordered person who has become suddenly or violently mentally disordered without an order of the clerk of the superior court. Adjudication of a person temporarily committed under the provisions of this section may proceed without removing said person to the county of his residence. (1899, c. 1, s. 16; Rev., s. 4582; C. S., s. 6204; 1945, c. 952, s. 31.)

Editor's Note. — The 1945 amendment rewrote this section.

§ 122-58. Expense paid by county of settlement; penalty. — Immediately upon the commitment to a hospital of any such person, a transcript of the proceedings shall be sent to the clerk of the county in which he is settled, and that county shall pay over to that county from which he was committed all the cost of the examination and commitment, and if the board of commissioners of the county of the settlement shall fail to pay all proper expense of said proceedings within sixty days after the claim shall have been presented, they shall forfeit and pay to the county which committed the insane person the sum of two hundred and fifty dollars, to be recovered by the commissioners of that county in a civil action brought in the superior court of that county from which the patient was committed to the hospital, against the commissioners of the county. (1899, c. 1, s. 16; Rev., s. 4583; C. S., s. 6205.)

§ 122-59. Person conveying patient to hospital without authority.—No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his settlement, and he shall not be repaid by the county or hospital for the expenses incurred in carrying the patient to and from the hospital. (1899, c. 1, s. 25; Rev., s. 4546; C. S., s. 6206.)

§ **122-60. How admission determined, when superintendent is in doubt.**—Whenever any insane person shall be conveyed to any hospital, and the superintendent is in doubt as to the propriety of his admission, he may convene any three of the board of directors, who shall constitute a board for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of such board so decide, such person shall be received into said hospital; but a like board may at any time thereafter deliver such insane person to any friend who will become bound with good surety to restrain him from committing injuries, and to keep, maintain, and take care of him, in the same manner as he might have become bound under the authority of the clerk of the court. (1899, c. 1, s. 21; Rev., s. 4590; 1917, c. 150, s. 1; C. S., s. 6207.)

§ **122-61. Admission refused, if patient exposed to contagious disease.**—The superintendent of the hospital may refuse to receive into his institution a patient when he shall have reliable information that the patient has recently been exposed to infectious or contagious disease, and there is danger of contagion and infection being conveyed by the patient, or where the patient comes from a quarantined community. Whenever a patient is rejected because of any of these reasons the superintendent shall make a record of the application and as soon as, in his opinion, the danger shall have been removed, he shall notify the sheriff of the county, and admit the patient into his hospital. (1899, c. 1, s. 26; Rev., s. 4591; C. S., s. 6208.)

§ **122-62. Commitment upon patient's application.**—Any person believing himself to be of unsound mind or threatened with mental disorder may voluntarily commit himself to the proper hospital. The application for commitment shall be in the following form:

State of North Carolina, County of .... I, ..., a resident of .... County, North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the State Hospital at .... I agree in all respects to conform to the rules and regulations of said institution. I understand that I shall not be entitled to a discharge until I shall have given the superintendent ten days' notice of my desire to be discharged.

....

Attest: ....

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his admission. The certificate of the clerk of the superior court need not accompany this application, and the medical director of the State hospital shall not notify the clerk of court of the county of the residence of the patient of the discharge of the patient. The superintendent may, if he think it a proper application, receive the patient thus voluntarily committed and treat him, but no report need to be made to the clerk of court of the county of his settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided except that a voluntary patient shall be entitled to a discharge after he shall have given the superintendent ten days' notice of his desire to be discharged.

Final commitment of voluntarily committed patients must proceed through the same channels as in case of the involuntary commitment of an allegedly mentally disordered person. (1899, c. 1, s. 49; Rev., s. 4593; 1917, c. 150, s. 1; C. S., s. 6209; 1945, c. 952, s. 32.)

Editor's Note. — The 1945 amendment substituted "mental disorder" for "insanity" in the first sentence, inserted the last sentence in the form of application, added the last paragraph of the section and made other changes.

§ 122-63. Proceedings in case of a mentally disordered citizen of another state.—If any person not a citizen of this State but of another state of the United States shall be ascertained to be mentally disordered, the clerk of the superior court shall commit such mentally disordered person to the proper State hospital for the mentally disordered of this State, and shall record on the order of commitment his not being a resident of this State. He shall also give on the application such information available in regard to his proper residence. Upon the admission of such mentally disordered person, the superintendent of the hospital shall notify the North Carolina Hospitals Board of Control that such person appears to be resident of another state, so that the Board of Control can take steps to establish such person's residence and have him transferred to the state in which he is legally resident.

After the legal residence of such mentally disordered person has been verified and confirmed by the state of his residence, such mentally disordered person shall be transferred to the state of his residence. If that state shall not provide for his removal to that state within a reasonable time, the superintendent of the State hospital shall cause him to be conveyed directly from the State hospital to the state of his legal residence and delivered there to the superintendent of the proper state hospital.

The cost of such proceedings and conveyance away from the state shall be borne by the county in which the person shall have been adjudged to be mentally disordered.

The provisions of this section shall apply only to such aforementioned mentally disordered persons who shall have been committed by the clerk of court to a State hospital, and shall not be construed to limit the responsibility of the State Board of Public Welfare with respect to the return of any other nonresident to his state of residence. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18.)

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane," and the 1947 amendment rewrote the section.

§ 122-63.1. Transfer of mentally disordered citizens of North Carolina from another state to North Carolina.—When the North Carolina Hospitals Board of Control or the State Board of Public Welfare shall have been notified by an agency of another state that there is confined within a state or psychiatric hospital of that state a mentally disordered person alleged to be a resident of the State of North Carolina, and shall have been given information to support the allegation and to aid in establishing such person's residence, the State Board of Public Welfare shall determine the residence of the alleged resident and shall report its findings to the North Carolina Hospitals Board of Control. On the basis of the findings of this investigation, and in accordance with the requirements for eligibility to state hospital care, the North Carolina Hospitals Board of Control may authorize his return directly to the proper State hospital for the mentally disordered at the expense of the state in which he is already confined.

The commitment of such mentally disordered person in another state, and the authorization by the Board of Control of his return shall be sufficient authority for the superintendent of the State hospital to hold this patient for a reasonable length of time, not to exceed thirty days or until he can be committed. Commitment of said mentally disordered person shall be effected by the examination of the person by two licensed physicians not connected with the proper State hospital for the mentally disordered. The affidavits of these two physicians shall be forwarded to the clerk of the superior court of the county in which said mentally disordered person is settled, without removal of the person from the hospital. On the basis of these affidavits the clerk may order the alleged mentally disordered person for the usual thirty-day observation period. (1945, c. 952, s. 34; 1947, c. 537, s. 19.)

Editor's Note. — The 1947 amendment rewrote this section.

§ **122-63.2. Reciprocal agreements with other states to set requirements for state hospital care.**—The North Carolina Hospitals Board of Control shall have the authority to negotiate with the proper state agencies of other states in regard to the legal residence of any alleged mentally disordered person who shall have been or may be committed to any State hospital of this State and alleged to be a legal resident of another state, or who shall have been committed to the State hospital of any other state and alleged to be a legal resident of this State, and to make reciprocal agreements with the proper agencies of the other states for the care of these mentally disordered persons by and in the proper state.

Where the law of another state sets a definite period of time during which a person must have resided continuously within that state to be considered a legal resident or to be entitled to care and treatment in a state mental hospital, this same definite period of time may be taken as the length of time required by this State in order for the mentally disordered person to be entitled to care and treatment in a State mental hospital in this State. (1947, c. 537, s. 20.)

§ **122-64. Proceedings in case of insanity of alien.**—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the Governor of this State of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the Governor shall transmit such information and examination to the Secretary of State at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen. (1899, c. 1, s. 16; Rev., s. 4585; C. S., s. 6211.)

§ **122-65. Mentally disordered person temporarily committed.** — When any person is found to be mentally disordered under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threatened injury to himself and danger to the community, and he cannot otherwise be properly restrained, he may be temporarily committed to a private hospital, county hospital, or other suitable place, or to the county jail until a more suitable provision can be made for his care. (1899, c. 1, s. 45; Rev., s. 4594; C. S., s. 6212; 1951, c. 359.)

Editor's Note. — The 1951 amendment rewrote this section.

ARTICLE 4.

Discharge of Patients.

§ **122-66. County commissioners may discharge mentally disordered person in county.**—It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained mentally disordered person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such mentally disordered person ought to be discharged if in a hospital. (1899, c. 1, s. 20; Rev., s. 4595; C. S., s. 6213; 1945, c. 952, s. 35.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-67. Release of patients from hospital; responsibility of county. —When it shall appear that any mentally disordered person under commitment to and confined in a hospital for the mentally disordered but not charged with a crime or under sentence shall have shown improvement in his mental condition as to be able to care for himself, or when he shall have become no longer dangerous to the community and to himself, or when it shall appear that suitable provision can be made for the alleged mentally disordered person so that he will not be injurious or dangerous to himself or the community, the superintendent of the hospital may in his discretion release him on probation to the care of his guardian, relative, friends or of any responsible person or agency in the community, and may receive him back into the hospital without further order of commitment during the continuance of the order of commitment which shall not have been terminated by the action of the superintendent in releasing him on probation. The superintendent of the hospital may require of the person assuming responsibility for the mentally disordered patient released on probation reports relative to the patient's condition and evidence and assurance of responsibility.

The superintendent may terminate the release of such mentally disordered patient and order his arrest and return to the hospital, and the person responsible for the mentally disordered patient's care may notify the superintendent of the hospital or the clerk of the superior court of the county in which the mentally disordered patient has residence or is now located, and the clerk of the superior court so notified may order the mentally disordered patient held pending his return to the hospital. The superintendent shall from time to time notify the clerk of the superior court of the county of the patient's residence of the release or probation of a patient for more than thirty days.

When the patient is indigent, the county may be required to pay for the transportation of the patient to the county of his settlement.

It shall be the duty of the sheriff of the county to which a patient has been released, or in which he is found at the termination of his release on probation by the superintendent or by the clerk of the superior court, to return him to the hospital to which he is under commitment; cost of such return shall be a charge on the county in which the mentally disordered patient is resident.

When a person under commitment has been released on probation to his own care or to his own family, and when he is no longer under the continued care and supervision of the hospital, as in a boarding home, and when he shall have been able to remain continuously out of the hospital without returning for the period of one year, he shall be regarded as recovered from his mental illness and no longer in need of care in a mental hospital, and shall be discharged from the order of commitment at the next succeeding discharge date of the hospital as provided by rules of the North Carolina Hospitals Board of Control. (1899, c. 1, s. 22; Rev., s. 4596; 1917, c. 150, s. 1; C. S., s. 6214; 1945, c. 952, s. 36; 1947, c. 537, s. 21.)

Cross Reference. — As to liability for torts committed by discharged inmate, see annotation under § 122-24.

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane" and made other changes. The 1947 amendment rewrote this section.

Discharge as Evidence of Sanity in Will Case. — Upon the issue of testamentary capacity an instruction that "a will duly probated in accordance with the formalities of law is presumed to be valid" is not objectionable, there being no presumption of mental incapacity by reason of commitment in an asylum when it has been shown that the testator had been discharged as restored or cured by a certificate issued in accordance with the provisions of this section. In re Crabtree, 200 N. C. 4, 156 S. E. 98 (1930).

§ **122-68. Superintendent may discharge patient temporarily.**—Each superintendent may, for the space of thirty days, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. (1899, c. 1, s. 23; Rev., s. 4597; C. S., s. 6215; 1945, c. 952, s. 37.)

Editor's Note. — The 1945 amendment struck out, following the word "days" in line two, the words "or until the next meeting of the board of three directors provided for in the preceding section." The amendment also struck out the former second sentence relating to reporting probations.

§ **122-68.1. Superintendent must notify Commissioner of Mental Health, and State Hospitals Board of Control of unusually dangerous mentally disordered patients.**—Whenever a person is found by the State hospital psychiatrists to be unusually dangerous to himself or others, the superintendent must notify the Commissioner of Mental Health and the State Hospitals Board of Control. Such a patient cannot be paroled without the agreement of the State Hospitals Board of Control and the Commissioner of Mental Health. If the Commissioner of Mental Health finds that any patient in one of the State hospitals is unusually dangerous to himself or to others he may place the patient under the rules of this section. (1945, c. 952, s. 39.)

§§ **122-69 to 122-71:** Repealed by Session Laws 1945, c. 952, s. 38.

Article 5.

Private Hospitals for the Mentally Disordered.

§ **122-72. Established under license and subject to control of Board of Charities.** — It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of mentally disordered persons, mental defectives, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the State Board of Charities and Public Welfare, and such hospitals, homes, or schools shall at all times be subject to the visitation of the said Board or any member thereof, and each hospital, home, or school shall make to the Board a semiannual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home, or school. Each hospital, home, or school shall file with the Board a copy of its bylaws, rules, and regulations, and rates of charges. The books of each hospital, home, or school shall at all times be open to the inspection of the Board or any member thereof. The State Board of Charities and Public Welfare is hereby given the authority to supervise and regulate all private hospitals, homes, and schools established hereafter in this State for the treatment of the above classes of people, and the Board shall have power to prescribe all such rules and regulations as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of their Board to visit and supervise any private hospital, home, or school hereafter established under this article. The State Board of Charities may bring an action in the Superior Court of Wake County to vacate and annul any license granted by the Board, when it shall appear to the satisfaction of the Board that the managers of any private hospital, home, or school have been guilty of gross neglect, cruelty, or immorality. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41.)

Cross Reference. — As to authority of State Board of Health to establish sanitary standards and methods of inspection for private hospitals, etc., see §§ 130-280 through 130-282.

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots" in the first sentence.

Prior to Session Laws 1945, c. 952, s. 40, the title of this article was "Private Hospitals for the Insane."

Demurrer.—Where an action is brought by the State Board of Public Welfare under this section to vacate and annul a license it had issued for the maintenance and operation of a private hospital for the insane, on the ground of immorality and cruelty of its principal owner or manager, in which the manager is joined, a demurrer of the individual is properly sustained. Board of Public Welfare v. Hospital, 196 N. C. 752, 147 S. E. 288 (1929).

Evidence. — Where there is allegation and evidence, in an action to annul and revoke the license of a private hospital for the insane, that immorality had been practiced among its employees by the manager and principal owner, and also cruel treatment had been used towards the patients by him, with separate issues as to each class of offense submitted to the jury, and the jury renders a partial verdict by leaving unanswered the issue as to gross immorality, the action of the court in directing a mistrial and refusing to sign judgment for defendant is not erroneous. Board of Public Welfare v. Hospital, 196 N. C. 752, 147 S. E. 288 (1929).

§ **122-73. Counties and towns may establish hospitals.**—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such mentally disordered persons as cannot be admitted into a State hospital, and of mental defectives and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the State Board of Charities and Public Welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals. (1899, c. 1, s. 61; Rev., s. 4601; C. S., s. 6220; 1945, c. 952, s. 42.)

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane" and the words "mental defectives" for the word "idiots."

§ **122-74. Private hospitals part of public charities.** — All hospitals, homes, or schools for the care and treatment of insane persons, idiots, and feeble-minded persons and inebriates, formed in compliance with the two preceding sections and duly licensed by the Board of Public Charities as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the State of North Carolina. (1903, c. 329, s. 1; Rev., s. 4602; C. S., s. 6221.)

§ **122-75. Mentally disordered persons placed in private hospital.**—Whenever any person shall be found to be mentally disordered in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such mentally disordered person, and, moreover, to support and maintain such mentally disordered person in any named hospital without the state, or any private hospital within the State, and such mentally disordered person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a State hospital (or in case such mentally disordered person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such mentally disordered person, shall deem it proper, then it may be lawful for the clerk, together with said physicians, to recommend in writing that such mentally disordered person shall be placed in the hospital so chosen, as a patient thereof. (1899, c. 1, s. 39; Rev., s. 4603; C. S., s. 6222; 1945, c. 952, s. 43.)

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane." It also struck out the words "with the clerk of the court or justice of the peace who made the examination" formerly appearing after the word "person" the second time it appears from the end of the section. The amendment further struck out the words "or justice" formerly appearing after the word "clerk" near the end of the section.

§ **122-76:** Repealed by Session Laws 1945, c. 952, s. 44.

§ **122-77. Clerk to report proceedings to judge.**—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such mentally disordered person may reside or be domiciled, and if he approves them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk. (1899, c. 1, s. 42; Rev., s. 4605; C. S., s. 6224; 1945, c. 952, s. 45.)

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane."

§ **122-78. Certified copy and approval of judge sufficient authority.**—A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such mentally disordered person appointed by the judge to remove him to the hospital designated. (1899, c. 1, s. 43; Rev., s. 4606; C. S., s. 6225; 1945, c. 952, s. 46.)

Editor's Note. — The 1945 amendment substituted the words "mentally disordered" for the word "insane."

§ **122-79. Examination and commitment to private hospital.**—When it is deemed advisable that any person, a citizen of North Carolina, or a citizen of another state or county temporarily sojourning in North Carolina, should be detained in the private hospital to which the person is to be committed within the State, two persons, one of whom must be a physician and who shall not be connected with this private hospital, shall make affidavit before a clerk of the superior court of this State or a notary public that they have carefully examined the alleged mentally disordered person; that they believe him to be a fit subject for commitment to a hospital for the mentally disordered, and that his detention and treatment will be for his benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding the mentally disordered person. The clerk may, as he sees fit, order any mentally disordered person to be taken to a private hospital within the State instead of to one of the State hospitals and this order shall be sufficient authority for holding such mentally disordered person in such private hospital. Mental defectives, feeble-minded persons, and inebriates may be committed to and held in private hospitals or homes in this State in the manner hereinbefore prescribed for mentally disordered persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment. (1903, c. 329, s. 2; Rev., s. 4607; C. S., s. 6226; 1945, c. 952, s. 47; 1949, c. 1060.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots." It also rewrote the third sentence and made other changes.

Prior to the 1949 amendment the physician mentioned in the first sentence could not be connected with any private hospital, and the affidavit was to be made only before the clerk of the superior court. The amendment substituted in the third sentence the words "this order" for "his warrant."

§ **122-80. Patients transferred from State hospital to private hospital.**—When it is deemed desirable that any patient of any State hospital be transferred to any licensed private hospital within the State, the executive committee may so order, and a certified copy of the commitment on file at the State hospital and the order of the executive committee shall be sufficient warrant for holding the mentally disordered person, mental defective, or inebriate by the officers of the private hospital. (1903, c. 329, s. 3; Rev., s. 4608; C. S., s. 6227; 1945, c. 952, s. 50.)

Editor's Note. — The 1945 amendment substituted "patient" for "inmate," "mentally disordered" for "insane" and "mental defective" for "idiot."

§ 122-81. Guardian of mentally disordered person to pay expenses out of estate.—It shall be the duty of any person having legal custody of the estate of a mentally disordered person, mental defective, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (1899, c. 1, s. 40; 1903, c. 329, s. 4; Rev., s. 4610; C. S., s. 6228; 1945, c. 952, s. 51.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" and "mental defective" for "idiot."

§ 122-81.1. Commitment upon patient's application to private hospital.—Any person believing himself to be of unsound mind or threatened with menal disorder may voluntarily commit himself to a private hospital within the State according to the procedure prescribed under § 122-62. (1945, c. 952, s. 47½.)

§ 122-82. Fees and charges for examinations.—The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the State hospitals. (1903, c. 329, s. 5; Rev., s. 4611; C. S., s. 6229.)

§ 122-82.1. Superintendent must notify clerk of court when mentally disordered person is paroled or discharged.—Whenever a patient who has been committed to a private hospital is paroled or discharged the committing clerk of court must be notified by the superintendent of the private hospital as provided for in the statutes relating to the State hospitals. (1945, c. 952, s. 48.)

§ 122-82.2. Superintendent must notify of escape.—Whenever a patient who has been committed to a private hospital escapes from that hospital the committing clerk of court, committing physicians, and the sheriff of the county in which the patient is settled must be notified by the superintendent of the private hospital. (1945, c. 952, s. 49.)

ARTICLE 6.

Mentally Disordered Criminals.

§ 122-83. Mentally disordered persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while mentally disordered, and all persons who, being charged with crime, are adjudged to be mentally disordered at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is mentally disordered and cannot plead, to the State Hospital at Raleigh, if the alleged criminal is white, or to the State Hospital at Goldsboro if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson County, to the State Hospital at Raleigh, as provided for mentally disordered Indians from Robeson County, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said boards of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (1899, c. 1, s. 63; Rev., s. 4617; C. S., s. 6236; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53.)

Cross Reference. — As to bringing insanity to attention of court and determination of present mental capacity, see note to § 122-84.

Editor's Note. — The 1945 amendment substituted in the first sentence "mentally disordered" for "insane."

Prior to Session Laws 1945, c. 952, s. 52, the title of this article was "Dangerous Insane."

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental disorder, committed to hospital; return for trial; detention for treatment.—When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of mental disorder, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.

When a person committed to a State hospital under this section as unable to plead shall have been reported by the hospital to the court having jurisdiction as being mentally able to stand trial and plead, the said patient shall be returned to the court to stand trial as provided in § 122-87. If the hospital authorities feel that an outright discharge or release of said person (in the event he is found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to stand trial and plead, make a request for his return for further care and treatment, in the event he is found not guilty.

If at the trial it is determined that the defendant is not guilty of a criminal offense and it appears to the trial judge that the State hospital in its report has requested that the defendant be returned to said hospital for further care and treatment as an outright discharge or release of said defendant would be harmful or dangerous to himself or the public at large, the trial judge shall commit said defendant to the proper State hospital for care and treatment and shall require him to remain at said hospital until discharged by the superintendent thereof upon the advice of the medical staff. (1899, c. 1, s. 65; Rev., s. 4618; C. S., s. 6237; 1923, c. 165, s. 4; 1945, c. 952, s. 54; 1951, c. 989, s. 1.)

Editor's Note. — The 1923 amendment changed this section by making a reference to the hospitals designated in the preceding section. The 1945 amendment substituted "mental disorder" for "insanity" in line seven of the first sentence, and the 1951 amendment added the last two paragraphs.

Constitutionality—Strict Construction. — This section is within the legislature's constitutional authority, but, being a restraint upon the liberty of the prisoner within the constitutional guarantee for his protection, should be strictly construed in his favor. State v. Craig, 176 N. C. 740, 97 S. E. 400 (1918).

Section Penal in Character.—This section is penal in its character. State v. Craig, 176 N. C. 740, 97 S. E. 400 (1918).

High Degree of Crime Contemplated by Section.—This section specifies a high degree of crime, such as murder, rape, and the like, indicating a class of criminals who may be dangerous to the public or individuals, if left at large, and by the addition of the words "or other crimes" did not include the offense of resisting arrest, especially if the resistance was only by words in the nature of a threat that the officer could not take him alive. State v. Craig, 176 N. C. 740, 97 S. E. 400 (1918).

How Question of Present Insanity Brought to Attention of Court.—The General Assembly has prescribed no procedure by which the question of the present insanity or mental disorder of the person accused of crime may be brought to the attention of the court, or for the investigation by the court preliminary to adjudicating the question whether accused is so mentally disordered as to be incapable of making a rational defense. Hence, in the absence of an applicable statute, the investigation of the present insanity or mental disorder to determine whether the accused shall be put on trial, and the form of the investigation ordered, are controlled by the common law. State v. Sullivan, 229 N. C. 251, 49 S. E. (2d) 458 (1948).

How Mental Capacity of Accused Determined.—The manner and form of an inquiry to determine whether a person accused of crime has the mental capacity to plead to the indictment and prepare a rational defense is for the determination of the trial court in the exercise of its discretion, and the court may submit an issue as to the present mental capacity of defendant and the issue of his guilt or innocence of the offense charged at the same time. State v. Sullivan, 229 N. C. 251, 49 S. E. (2d) 458, (1948), discussed in 27 N. C. Law Rev. 258.

Release on Habeas Corpus.—A person illegally detained in a hospital for the dangerous insane cannot be released on habeas corpus if he is insane at the time of the return of the writ. In re Boyett, 136 N. C. 415, 48 S. E. 789 (1904).

Court May Order Prisoner Returned for Examination. — See State v. Pritchett, 106 N. C. 667, 11 S. E. 357 (1890).

Finding by the court implies a discretion on the part of the trial judge. State v. Godwin, 216 N. C. 49, 3 S. E. (2d) 347 (1939).

Knowledge of Section by Jury in Murder Prosecution.—A defendant, whose defense is the lack of capacity to commit murder in the first degree, is not entitled to have the jury know the provisions of this section and § 122-86. State v. Bracy, 215 N. C. 248, 1 S. E. (2d) 891 (1939).

§ 122-85. Convicts becoming mentally disordered committed to hospital.—All convicts becoming mentally disordered after commitment to the State prison, and the fact being certified as now required by law in the case of other mentally disordered persons, shall be admitted to the hospital designated in § 122-83. In case of the expiration of the sentence of any convict mentally disordered person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind or such time as he may be considered harmless and incurable. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 5; 1945, c. 952, s. 55.)

Editor's Note. — The 1923 amendment inserted the reference to the hospitals designated in § 122-83. And the 1945 amendment substituted "mentally disordered" for "insane."

§ 122-86. Persons acquitted of crime on account of mental disorder; how discharged from hospital.—No person acquitted of a capital felony on the ground of mental disorder, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the General Assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the Governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of mental disorder, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several State hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (1899, c. 1, s. 67; Rev., s. 4620; C. S., s. 6239; 1923, c. 165, s. 6; 1945, c. 952, s. 56.)

Editor's Note. — The 1945 amendment substituted "mental disorder" for "insanity."

Cited in State v. Bracy, 215 N. C. 248, 1 S. E. (2d) 891 (1939).

§ 122-87. Proceedings in case of recovery of patient charged with crime. — Whenever a person confined in any hospital for the mentally disordered, and against whom an indictment for crime is pending, has recovered or has been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's settlement will repay the sheriff for his expenses and services. (1899, c. 1, s. 64; Rev., s. 4621; C. S., s. 6240; 1923, c. 165, s. 7; 1945, c. 952, s. 57.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane" in the first sentence.

§ 122-88. Ex-convicts with homicidal tendency committed to hospital.—Whenever any person who has been confined in the State prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal tendency, and shall be duly adjudged mentally disordered, in accordance with the provisions of article three of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged mentally disordered may, in his discretion, commit such person to the State hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; C. S., s. 6241; 1923, c. 165, s. 8; 1945, c. 952, s. 58.)

Editor's Note. — The 1945 amendment substituted "tendency" for "mania" and "mentally disordered" for "insane."

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the State hospitals designated in this law for the mentally disordered to receive all such mentally disordered persons as shall be committed to said institutions in accordance with the provisions of this law, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; C. S., s. 6242; 1923, c. 165, s. 9; 1945, c. 952, s. 59.)

Editor's Note. — The 1945 amendment substituted "mentally disordered" for "insane."

§ 122-90. Inferior courts without jurisdiction to commit.—No court inferior to the superior court of this State shall have authority to send or commit any insane person to any State hospital for the criminal insane, as provided in this article. (1939, c. 66.)

§ 122-91. Alleged criminal may be committed for observation.—Any alleged criminal indicted on a felony charge may, on the recommendations of the presiding or resident judge of the superior court, in or out of term, be committed to a State hospital or to some other suitable place for a period of not exceeding thirty days for observation. (1945, c. 952, s. 60; 1951, c. 181.)

Editor's Note. — The 1951 amendment inserted the words "or resident" and "in or out of term".

ARTICLE 7.

Camp Butner Hospital.

§ 122-92. Acquisition of Camp Butner Hospital authorized. — The State Hospitals Board of Control is authorized to acquire by purchase, gift or otherwise the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of a modern up-to-date hospital for the care and treatment of the mentally sick of this State. (1947, c. 789, s. 2.)

Editor's Note.—For another act authorizing the acquisition of Camp Butner and the establishment of an institution similar to the other State hospitals, etc., see Session Laws 1947, see 537, s. 1 set out in note to § 122-1. As to appropriation, etc., for acquisition and development of Camp Butner Hospital, see Session Laws 1947, c. 789, ss. 1, 3 and 4.

§ 122-93. Disposition of surplus real property.—The North Carolina Hospitals Board of Control is authorized and empowered to sell, lease, rent or otherwise dispose of surplus real property located at Camp Butner, under such rules and regulations as may be adopted jointly by the North Carolina Hospitals Board of Control and the Advisory Budget Commission: Provided, however, that all conveyances of real property shall fully comply with the provisions of article 10, chapter 143 of the General Statutes and in particular §§ 143-146, 143-147, 143-148, 143-149, 143-150, 143-151. (1949, c. 71, s. 1.)

§ 122-94. Application of State Highway and Motor Vehicle Laws to roads, etc., at Camp Butner; penalty for violations.—All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the grounds of Camp Butner. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on said grounds as is now vested by law in the State Hospitals Board of Control. (1949, c. 71, s. 2.)

§ 122-95. Ordinances and regulations for enforcement of article.—The North Carolina Hospitals Board of Control is authorized to make such rules and regulations and to adopt such ordinances, as it may deem necessary, to enforce the provisions of this article and to carry out its true purpose and intent, for the better administration of the Camp Butner Hospital and any adjacent territory owned by it, and in particular may make ordinances and adopt rules and regulations dealing with and controlling the following subjects:

1. To regulate the use of streets, alleys, driveways, and to establish parking areas.

2. To promote the health, safety, morals and general welfare of those residing on, occupying, renting or using any property or facilities within its limits, and those visiting and patronizing the hospital by:

a. Regulating the height, number of stories and size of buildings or other structures, the percentage of lot to be occupied, the size of yards and courts and other open spaces, the density of population, and the location and use of buildings, structures for trade, industry, residence or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings, or cause them to be removed, at the expense of the owner, when dangerous to life, health or other property.

b. To prohibit, restrict and regulate theatres, carnivals, circuses, shows, parades, exhibitions of showmen and all other public amusements and entertainments and recreations.

c. To regulate, restrict or prohibit the operation of pool and billiard rooms and dance halls.

d. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens and other animals and fowl of every description.

e. To prevent and abate nuisances whether on public or private property. (1949, c. 71, s. 3.)

§ 122-96. Recordation of ordinances and regulations; printing and distribution.—All ordinances, rules and regulations adopted pursuant to the authority of this article shall be recorded in the proceedings of the North Carolina Hospitals Board of Control and printed copies shall be filed in the office of the Secretary of State, and available for distribution to persons requesting the same. (1949, c. 71, s. 4.)

§ 122-97. Violations made misdemeanor.—Any person, firm or corporation violating any of the provisions of this article, or any ordinance, rule or regulation adopted pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty days or by both such fine and imprisonment. (1949, c. 71, s. 5.)

§ 122-98. Designation of special police officers.—To enable the North Carolina Hospitals Board of Control to enforce the provisions of this article and any rule or regulation adopted pursuant thereto, the said North Carolina Hospitals Board of Control is authorized to designate one or more special police officers who shall have the same powers as peace officers now vested in sheriffs and constables within the territory embraced by the Camp Butner Hospital site and any adjacent territory thereto owned or leased by the said North Carolina Hospitals Board of Control. (1949, c. 71, s. 6.)

Chapter 123.

Impeachment.

Article 1.

The Court.

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ARTICLE 1.

The Court.

§ **123-1. Senate is court of impeachment; quorum.**—The court for the trial of impeachments shall be the Senate. A majority of the members shall be necessary to constitute a quorum. (Const., art. 4, s. 3; 1868-9, c. 168, s. 1; Code, ss. 2923, 2924; Rev., s. 4623; C. S., s. 6244.)

§ **123-2. Chief Justice presides in impeachment of Governor.**—When the Governor of the State, or Lieutenant-Governor, upon whom the powers and duties of the office of Governor have devolved, is impeached, the Chief Justice of the Supreme Court shall preside; and in a case requiring the Chief Justice to preside, notice shall be given him, by order of the Senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the Chief Justice shall preside over the Senate during the consideration of said articles upon the trial of the person impeached. But the Chief Justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the Senate with its assent. (Const., art. 4, s. 4; 1868-9, c. 168, s. 6; Code, s. 2927; Rev., s. 4624; C. S., s. 6245.)

§ **123-3. Power of the Senate as a court.**—The Senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts, or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice. (1868-9, c. 168, s. 4; Code, s. 2926; Rev., s. 4626; C. S., s. 6246.)

§ **123-4. Power of presiding officer.**—The presiding officer of the Senate shall have power:

1. To direct all necessary preparations in the Senate chamber.
2. To make and issue by himself or by the clerk of the Senate all orders, mandates, writs, and precepts authorized by law or by the Senate.
3. To direct all the forms of procedure during the trial not otherwise specially provided for.
4. To decide in the first instance, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the mem-

bers present, be decided by yeas and nays. (1868-9, c. 168, s. 5; Code, s. 2927; Rev., s. 4627; C. S., s. 6247.)

§ **123-5. Causes for impeachment.**—Every officer in this State shall be liable to impeachment for:

1. Corruption or other misconduct in his official capacity.
2. Habitual drunkenness.
3. Intoxication while engaged in the exercise of his office.
4. Drunkenness in any public place.
5. Mental and physical incompetence to discharge the duties of his office.
6. Any criminal matter, the conviction whereof would tend to bring his office into public contempt. (1868-9, c. 168, s. 16; Code, s. 2937; Rev., s. 4628; C. S., s. 6248.)

A judge of probate is not subject to impeachment under this section. People v. Heaton, 77 N. C. 18 (1877).

ARTICLE 2.

Procedure in Impeachment.

§ **123-6. Articles of impeachment preferred.**—All impeachments must be delivered by the House of Representatives to the presiding officer of the Senate, who shall thereupon cause proclamation to be made in the following words:

"All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of North Carolina articles of impeachment against ...."

After which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the House of Representatives that the Senate will take proper order on the subject of impeachment, of which due notice shall be given to the House of Representatives. (1868-9, c. 168, ss. 2, 3; Code, s. 2925; Rev., s. 4630; C. S., s. 6249.)

§ **123-7. When President of Senate impeached, another officer chosen.**—If the President of the Senate be impeached, notice thereof shall immediately be given to the Senate by the House of Representatives, in order that another President may be chosen. (1868-9, c. 168, s. 14; Code, s. 2935; Rev., s. 4631; C. S., s. 6250.)

§ **123-8. Notice given to the accused.**—The Senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person impeached to appear and answer the articles exhibited, either in person or by attorney. He shall be entitled to a copy of the impeachment and have a reasonable time to answer the same. (1868-9, c. 168, s. 7; Code, s. 2928; Rev., s. 4632; C. S., s. 6251.)

§ **123-9. Accused entitled to counsel.**—The person accused is entitled on the trial of impeachment to the aid of counsel. (1868-9, c. 168, s. 8; Code, s. 2929; Rev., s. 4629; C. S., s. 6252.)

§ **123-10. Time of hearing fixed.**—When issue is joined in the trial of an impeachment the court shall fix a time and place for the trial thereof. (1868-9, c. 168, s. 9; Code, s. 2930; Rev., s. 4633; C. S., s. 6253.)

§ **123-11. Oath administered to members.**—At the time and place appointed, and before the commencement of the trial, the presiding officer of the Senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation truly and impartially to try and determine the charge in question, under the Constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation. (1868-9, c. 168, s. 10; Code, s. 2931; Rev., s. 4625; C. S., s. 6254.)

ARTICLE 3.

Effect of Impeachment.

§ **123-12. Accused suspended during trial.** — Every officer impeached shall be suspended from the exercise of his office until his acquittal. (1868-9, c. 168, s. 13; Code, s. 2934; Rev., s. 4634; C. S., s. 6255.)

§ **123-13. Manner of conviction; judgment; indictment.**—No person shall be convicted on an impeachment without the concurrence of two-thirds of the senators present. Upon a conviction of the person impeached, judgment may be given that he be removed from office, or that he be disqualified to hold any office of honor, trust, or profit under this State, or both. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law. (Const., art. 4, ss. 3, 4; 1868-9, c. 168, ss. 11, 12, 15; Code, ss. 2932, 2933, 2936; Rev., s. 4635; C. S., s. 6256.)

Chapter 124.

Internal Improvements.

Sec.
124-1. Governor and Council to control internal improvements.
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124-3. Report of railroad, canal, etc.; contents.
124-4. Report to General Assembly; contents.
124-5. Approval of encumbrance on State's interest in corporations.
124-6. Appointment of proxies, etc.
124-7. Power of investigation of corporations.

§ **124-1. Governor and Council to control internal improvements.**—The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. (1925, c. 157, s. 1.)

§ **124-2. State deemed shareholder in corporation accepting appropriation.**—When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2.)

§ **124-3. Report of railroad, canal, etc.; contents.**—The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, when required to do so by the Governor, make or cause to be made to the Governor and Council of State a written report of its affairs. This report shall show:

1. Number of shares owned by the State.
2. Number of shares owned otherwise.
3. Face value of such shares.
4. Market value of each of such shares.
5. Amount of bonded debt, and for what purpose contracted.
6. Amount of other debt, and how incurred.
7. If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
8. Amount of gross receipts for past year, and from what sources derived.
9. An itemized account of expenditures for past year.
10. Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.
11. Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
12. Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

Any person failing to report as required by this section shall be guilty of a misdemeanor and be fined or imprisoned at the discretion of the court. (1925, c. 157, s. 3.)

§ **124-4. Report to General Assembly; contents.**—The Governor and Council of State shall biennially report to the General Assembly:

1. The condition of all railroads, canals, or other works of internal improvement in which the State has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the State.

2. The amount, condition, and character of the State's interest in other railroads, roads, canals, or other works of internal improvement in which the State has taken stock, to which she has loaned money, or whose bonds she holds as security.

3. The condition of such roads or other corporate bodies, in detail, as are referred to in the previous section, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the State's interest in the same as may to them seem warranted by the status of the roads or corporations.

4. The names of all persons failing or refusing to report as is required by law. (1925, c. 157, s. 4.)

§ **124-5. Approval of encumbrance on State's interest in corporations.**—No corporation or company in which the State has or owns any stock or any interest shall sell, lease, mortgage, or otherwise encumber its franchise, right of way, or other property, except by and with the approval and consent of the Governor and Council of State. (1925, c. 157, s. 5.)

Cross Reference.—As to conveyances of property held by State institutions, agencies, etc., see §§ 143-147 through 143-150.

§ **124-6. Appointment of proxies, etc.**—The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion. (1925, c. 157, s. 6.)

§ **124-7. Power of investigation of corporations.**—The Governor and Council of State shall have the power to investigate the affairs of any corporation or association described in § 124-3 and may require the Attorney General or the Utilities Commission to assist in making such investigation under the rules and regulations prescribed in chapter sixty-two. (1925, c. 157, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

Chapter 125.

Libraries.

Article 1.

State Library.

Sec.
125-1. [Repealed.]
125-2. Trustees; duties and powers.
125-3. Librarian's seal; certified copies of documents as evidence.
125-4. Governor to designate documents to be preserved; books bound and labeled.
125-5. Penalty for injury to books.
125-6. Committee to purchase books.
125-7. Librarian; election and bond.
125-8, 125-9. [Repealed.]
125-10. Separate reading room for colored people.
125-11. Open hours for Library.
125-12. Members of State boards and commissions to use books.

Article 2.

Document Library.

125-13. Location.
125-14. Librarian.
Sec.
125-15. [Repealed.]
125-16. Librarian to procure books.
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Article 3.

Library Commission.

125-18. Commission established; members appointed.
125-19. Election of officers.
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125-23. Expenses of Commission paid.
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125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.

ARTICLE 1.

State Library.

§ **125-1.** Repealed by Session Laws 1947, c. 781.

§ **125-2. Trustees; duties and powers.**—The Governor, Superintendent of Public Instruction, and Secretary of State, and their respective successors in office, are appointed trustees of the State and Document Libraries. The board of trustees may make rules and regulations by which the Librarian shall be governed for the protection and preservation of the books and Library; and may make such distribution of the books, reports, and publications belonging to the State as in the judgment of the board is advisable and proper. (1871-2, c. 169, s. 3; Code, s. 3612; 1903, cc. 104, 133; Rev., s. 5069; C. S., s. 6574; 1947, c. 781.)

Editor's Note. — The 1947 amendment made the making of rules and regulations permissive instead of mandatory.

§ **125-3. Librarian's seal; certified copies of documents as evidence.**—It shall be the duty of the Secretary of State to furnish the State Librarian with a seal of office. The State Librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in his office. When the certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matters therein contained, and as such shall receive full faith and credit. (1905, c. 537; Rev., s. 5070; C. S., s. 6575.)

§ **125-4. Governor to designate documents to be preserved; books bound and labeled.**—The Governor shall designate such portions of the documents, journals, and acts of Congress of the United States as he may deem proper to be preserved in the Library; may designate which of them are to be bound, of such pamphlets, acts, and journals of the General Assembly, and works of periodical literature, laws of other states, and documents of the General Assembly that may be added to the Library; and the Librarian shall have them bound. And all the books belonging to the Library, or which may be added thereto, shall be labeled in gilt letters with the words "State Library." (1840, c. 46, s. 6; 1842, c. 68, s. 3; R. C., c. 92, s. 4; Code, s. 3614; Rev., s. 5074; C. S., s. 6579.)

§ **125-5. Penalty for injury to books.**—Any person who shall damage, deface, or mutilate any book which he may be allowed to withdraw from the Library, or who shall return any book so damaged, defaced, or mutilated while in his possession, shall forfeit and pay the full amount of the damage, which amount shall be determined by the Librarian, but in no case to exceed double the value of the book; and the penalties and forfeitures accruing under this section shall be sued for and recovered by the Librarian in the name of the State, before any justice of the peace, and shall be added to the fund for the increase of the Library. (1842, c. 68, s. 1; R. C., c. 92, s. 5; Code, s. 3615; Rev., s. 5075; C. S., s. 6580.)

§ **125-6. Committee to purchase books.**—The State Librarian, superintendent of Public Instruction, together with three other persons to be selected by the trustees, shall constitute a committee to purchase books for the State Library, and they are to serve without compensation in the matter of selecting and buying books. (1901, c. 503, s. 3; Rev., s. 5076; C. S., s. 6581.)

§ **125-7. Librarian; election and bond.**—A Librarian shall be elected quadrennially by the trustees of the State Library, and shall give bond with security in such sum as the trustees may determine, payable to the State of North Carolina, conditioned for the safekeeping of the books and the faithful discharge of his duties, and he shall hold his place till his successor shall be appointed and qualified. (1870-1, c. 70, s. 1; 1883, c. 216, s. 1; Code, s. 3604; 1895, c. 351; 1903, c. 727; Rev., s. 5077; C. S., s. 6582.)

§§ **125-8, 125-9:** Repealed by Session Laws 1947, c. 781.

§ **125-10. Separate reading room for colored people.**—The State Librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the Library for the purpose of reading books or periodicals. (1901, c. 503, s. 2; Rev., s. 5080; C. S., s. 6585.)

§ **125-11. Open hours for Library.**—The Library shall be kept open during the day for such time as the trustees may prescribe; and from seven to nine o'clock each evening, if the necessary expense of keeping the same open be voluntarily paid by the citizens of the city of Raleigh. (1870-1, c. 70, s. 2; 1881, c. 352; Code, s. 3605; 1889, pub. res., p. 530; Rev., s. 5082; C. S., s. 6585.)

§ **125-12. Members of State boards and commissions to use books.**—Any member of a State board or commission residing in Raleigh shall be allowed the privilege of borrowing from the State Library, material, books or other publications, except reference books, and enjoy the same privileges in respect thereto as is allowed State officials. (1925, c. 115.)

ARTICLE 2.

Document Library.

§ **125-13. Location.**—The Document Library shall occupy rooms in the State Library. (1887, c. 258, s. 1; Rev., s. 5087; C. S., s. 6592.)

§ **125-14. Librarian.** — The Librarian of the State Library shall be the custodian of the Document Library. (1887, c. 258, s. 3; Rev., s. 5088; C. S., s. 6593.)

§ **125-15:** Repealed by Session Laws 1947, c. 781.

§ **125-16. Librarian to procure books.**—It shall be the duty of the Librarian to procure two copies each of the laws and journals of the General Assembly, which shall be furnished to him by the Secretary of the State, and to arrange them on shelves in chronological order for the use of the two houses of the General Assembly respectively. (1887, c. 258, s. 2; Rev., s. 5090; C. S., s. 6595.)

§ **125-17. Library open, when.** —The Librarian shall keep the Document Library open during the sessions of the General Assembly, in order that members may have access to records, and for use of committees of either house. At all other times the doors shall be kept securely locked, but the Librarian shall, upon application, admit persons who wish to examine any of the books and records therein. (1891, pub. res., p. 652; Rev., s. 5091; C. S., s. 6596.)

Article 3.

Library Commission.

§ **125-18. Commission established; members appointed.** — There is hereby created a library commission to be known as the Library Commission of North Carolina, which shall consist of the Superintendent of Public Instruction, the State Librarian, two other persons who shall be appointed by the North Carolina Library Association, and one other person who shall be appointed by the Governor, all of whom shall serve without compensation. After the ninth day of March, one thousand nine hundred and nine, the Governor shall appoint at once one person to serve one year, and the North Carolina Library Association one person to serve two years and one person to serve three years; and as these terms expire, annually thereafter one person shall be appointed for three years by the Governor and by the North Carolina Library Association, according to the vacancy to be filled. The Library Commission may accept resignations and fill vacancies for unexpired terms. The term of office of the members of the Commission shall begin April first. (1909, c. 873, s. 1; C. S., s. 6597.)

§ **125-19. Election of officers.**—The Commission shall annually elect its own officers, who shall perform all the duties usually pertaining to such offices. (1909, c. 873, s. 2; C. S., s. 6598.)

§ **125-20. Duties of Commission; secretary employed.**—The Commission shall give assistance, advice, and council to all libraries in the State, to all communities which may propose to establish libraries, and to all persons interested, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance, and other details of library management as may be practicable. The Commission may aid in organizing new libraries or in improving those already organized, and may establish and maintain traveling or other libraries, as may be practicable. The Commission shall employ a secretary, not a member of the Commission, who shall be a person trained in modern library methods, and who shall receive such compensation as the Commission may decide, and who shall perform the usual duties of a secretary and such other duties as may be assigned by the Commission, and who shall serve at the will of the Commission. (1909, c. 873, s. 3; C. S., s. 6599.)

§ **125-21. Public libraries to report to Commission.**—Every public library in the State shall make an annual report to the Commission, in such form as may be prescribed by the Commission. The term "public library" shall, for the purpose of this article, include free public libraries, subscription libraries, college and university libraries, Young Men's Christian Association, legal association, medical association, Supreme Court, and State Libraries. (1909, c. 873, s. 4; C. S., s. 6600; 1949, c. 232, s. 1.)

Editor's Note. — The 1949 amendment changed this section so as to exclude school libraries, it being the stated intent and purpose of the amendment to make it unnecessary for annual reports to be made to the Library Commission by "school" libraries.

§ 125-22. Commission to report to Governor.—The Commission shall make a biennial report to the Governor, covering its work up to January first preceding each session of the General Assembly. Five hundred copies of this report shall be published as other State official reports are published. (1909, c. 873, s. 5; C. S., s. 6601.)

§ 125-23. Expenses of Commission paid.—No member of the Commission shall ever receive any compensation for service as a member, but the actual traveling expenses of members in attendance at meetings of the Commission or in visiting or establishing libraries and other incidental and necessary expenses connected with the work of the Commission may be paid. (1909, c. 873, s. 6; C. S., s. 6602.)

§ 125-24. Offices provided.—The Board of Public Buildings and Grounds may allow suitable offices and equipment in the Capitol, the State Library, or other State buildings, for the use of the Library Commission. (1909, c. 873, s. 8; C. S., s. 6604.)

§ 125-25. Commission authorized to accept and administer funds from federal government and other agencies. — The North Carolina Library Commission is hereby authorized and empowered to receive, accept and administer any money or moneys appropriated or granted to it, separate and apart from the General Library Commission Fund, for providing and equalizing public library service in North Carolina:

(1) By federal government, and

(2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the governing board of the Library Commission of North Carolina, which body shall frame bylaws, rules and regulations for the allocation and administration of this fund.

This fund shall be used to increase, improve, stimulate and equalize library service to the people of the whole State, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the State, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other factors as may affect the State program of library service.

Any gift or grant from the federal government or other sources shall become a part of said fund, to be used as part of the State fund, or may be invested in such securities in which the State Sinking Fund may be invested as in the discretion of the governing board of the Library Commission of North Carolina may be deemed advisable, the income to be used for the promotion of libraries as aforesaid. (1937, c. 206.)

§ 125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.—1. It is hereby declared the policy of the State to promote the establishment and development of public library service throughout all sections of the State.

2. For promoting, aiding and equalizing public library service in North Carolina the sum of one hundred thousand dollars, ($100,000.00), annually shall be and is hereby appropriated out of the monies within the State treasury, not otherwise

appropriated, which fund shall be known as the Public Library Service Fund.

3. The fund herein provided shall be administered by the governing board of the North Carolina Library Commission, which body shall frame bylaws, rules and regulations for the allocation and administration of said fund. The fund shall be used to improve, stimulate, increase and equalize public library service to the people of the whole State, and shall be used for no other purpose, except as herein provided, and shall be allocated among the counties of the State taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the State program of public library service.

4. For the necessary expenses of administration, allocation and supervision, a sum not to exceed seven per cent (7%) of the annual appropriation may annually be used by the North Carolina Library Commission.

5. The fund appropriated under this section shall be separate and apart from the appropriation to the General Library Commission Fund, which fund shall not be affected by this section or appropriation hereunder.

6. The powers herein granted shall be in addition to and not in subrogation of, or repeal of, any power or authority now or heretofore granted to the North Carolina Library Commission. (1941, c. 93; 1949, c. 232, s. 2.)

Editor's Note. — The 1949 amendment changed the amount in subsection 4 from five to seven per cent.

Chapter 126.

Merit System Council.

Sec.
126-1. Appointment of members of Merit System Council; qualifications; terms; compensation.
126-2. Supervisor of merit examinations: rules and regulations; examinations.
126-3. Organization of Council; meetings; representation of State agencies; duties and pay of supervisor.
126-4. Competitive examinations for all positions; moral character of applicants.
126-5. Present employees previously examined.
126-6. Persons previously examined and on eligible list.
126-7. Notice of time and place of examinations.
126-8. Register of applicants passing examinations; method of making appointments.
126-9. Admission to examinations without regard to minimum qualifications; probationary employee.
126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.
126-11. Filling vacancies; promotions.
126-12. Dismissal or suspension of employees; separations.
126-13. Appeal from dismissal, suspension, or demotion.
126-14. Authority of Merit System Council.
126-15. Application of chapter.
126-16. Effect on certain existing laws.
126-17. Purpose of chapter clarified.

§ 126-1. Appointment of members of Merit System Council; qualifications; terms; compensation.—The Governor of North Carolina is hereby authorized to appoint a Merit System Council, which shall be composed of five members, all of whom shall be public-spirited citizens of this State of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the Employment Security Commission, the North Carolina Medical Care Commission, the State Board of Health, the State Board of Charities and Public Welfare, employees of the North Carolina State Hospitals Board of Control paid in whole or in part from federal funds granted by the Surgeon General of the Public Health Service by virtue of the National Mental Health Act, or by any other federal department or agency, and administered by the North Carolina State Hospitals Board of Control as the State Mental Health Authority in the mental health or mental hygiene program, and the State Commission for the blind. No Council member shall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the Council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the Merit System Council shall be paid seven dollars ($7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the Council but shall receive no other salary. (1941, c. 378, s. 1; 1947, c. 598, s. 1; 1947, c. 933, s. 4; 1949, c. 492.)

Editor's Note. — The first 1947 amendment substituted "Employment Security Commission" for "Unemployment Compensation Commission" in the first sentence, and the second 1947 amendment inserted therein the words "the North Carolina Medical Care Commission." The 1949 amendment inserted the provision as to employees of the Hospitals Board of Control.

§ 126-2. Supervisor of merit examinations; rules and regulations; examinations.—The supervisor of merit examinations appointed under the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the General Assembly of 1949, in co-operation with the Merit System Council, and with the approval of the State Personnel Director, the State agencies affected by this chapter, as amended, and the federal security agency or other federal agency or department charged with the administration of the Federal Social Security Laws, shall prepare rules and regulations, job descriptions and specifications, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2; 1949, c. 718, s. 2.)

Editor's Note. — The 1949 amendment rewrote this section.

§ 126-3. Organization of Council; meetings; representation of State agencies; duties and pay of supervisor. — The said Council shall meet as soon as practicable and organize by electing one of its members as chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the said Council and shall be guardian of all papers pertaining to the business of said Council. Meetings of the Council shall be held as often as necessary and practicable upon the call of the chairman. The State agencies shall have the right to be represented at all meetings of the Council but such representation shall be without voting power. The supervisor of merit examinations, above provided for, shall keep a record of all examinations held, and shall perform such other duties as the Council shall prescribe for which he shall be paid compensation to be fixed by the State Personnel Director. (1941, c. 378, s. 3; 1949, c. 718, s. 3.)

Editor's Note. — The 1949 amendment substituted "State Personnel Director" for "Director of the Budget."

§ 126-4. Competitive exminations for all positions; moral character of applicants.—All applicants for positions in the agencies or departments affected by this chapter shall be subjected to an examination by the Merit System Council which shall be competitive and free to all persons meeting requirements prescribed by said Council, subject to reasonable and proper limitations as to age, health, and moral character, which said examinations shall be practical in their character and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge proficiently the duties of the position to which they seek appointment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning his or her political or religious opinions or affiliations. The said Council shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all applicants for positions in the agencies and departments affected by this chapter, to the end that all persons certified by said Council as eligible for employment in said agencies or departments shall be persons of good character as well as possessing necessary mental and physical qualifications. (1941, c. 378, s. 4.)

§ 126-5. Present employees previously examined. — All employees presently employed in the agencies or departments affected by this chapter and who have heretofore taken and passed merit examinations under the Merit Rating System now in effect, shall not be required to take further examinations as herein provided. (1941, c. 378, s. 5.)

§ **126-6. Persons previously examined and on eligible list.**—All persons who have successfully passed merit examinations under the Merit Rating System now in effect and are shown on the register as eligible for employment shall not be required to take further examinations as provided herein and shall have their names placed on the new registers of those eligible for employment to be established under this chapter. (1941, c. 378, s. 5½.)

§ **126-7. Notice of time and place of examinations.** — Notice of the time and place of every examination shall be given by the Merit System Council by publication once a week for two weeks immediately preceding such examination, in some newspaper having a general circulation in the State of North Carolina, and such notice shall be posted in a conspicuous place in the office of the supervisor of merit examinations, in the city of Raleigh for at least two weeks next preceding such examination. (1941, c. 378, s. 6.)

§ **126-8. Register of applicants passing examinations; method of making appointments.** — Said Council shall prepare and keep as a permanent record of the Council a register of all persons successfully passing such examinations, accurately reflecting the grades made by such applicants. Whenever any appointment is to be made to any of said agencies or departments, the Council shall certify from said registered list of successful applicants three names for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the Council, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing, which objection is sustained by the supervisor with the approval of the Council. (1941, c. 378, s. 7.)

§ **126-9. Admission to examinations without regard to minimum qualifications; probationary employee.**—An employee who is certified by the agency as having given satisfactory service continuously for six calendar months preceding January first, one thousand nine hundred and forty or any other date or dates as may be required by the federal agencies supervising the expenditures of federal funds through the State agencies affected by this chapter may be admitted to the examination for the position held by him on March 15, 1941, without regard to minimum qualifications of training and experience. Upon certification of the supervisor that he has attained a passing grade in the examination held in accordance with the provisions of this chapter he may be appointed as a probationary employee. The probationary period of such an employee shall date from the certification of the supervisor that he has attained a passing grade. (1941, c. 378, s. 8.)

§ **126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.**—All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of six months. The probationary period shall be an essential part of the examination process, and shall be utilized for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Permanent appointment of a probationary employee shall begin with the date ending the probationary period, provided that the personnel officer of the agency concerned has received from the employee's supervisor a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. The statement shall contain an appraisal of the value of the employee's services and shall include a service rating upon a form prescribed by the supervisor of merit examinations. It shall be the responsibility of the personnel officer to obtain such statement with recommendations four weeks prior to the end of the probationary period. The personnel officer, on the basis of such statement and recommendations, shall make recommendations to the appointing authority, and if it is determined that the services of the employee have been unsatisfactory, the personnel officer shall notify the employee in writing at least fifteen days in advance of the date his services are to be terminated. An employee whose appointment is to be made permanent shall also be notified. The personnel officer shall notify the merit system supervisor of the action taken regarding the services of the employee. (1941, c. 378, s. 9.)

§ **126-11. Filling vacancies; promotions.** — As far as is practicable and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. Preference in promotion may be given to employees within the agencies, and all inter-agency promotions must be approved by the appointing authorities concerned. A candidate for promotion must be certified by the supervisor to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he shall be required by the supervisor to qualify for the new position by promotional competitive or noncompetitive examination administered by the supervisor. (1941, c. 378, s. 10.)

§ **126-12. Dismissal or suspension of employees; separations.**—The appointing authority, fifteen days after notice in writing to an employee stating specific reasons therefor, may dismiss any employee who is negligent or inefficient in his duties, or unfit to perform his duties and/or who is found to be guilty of gross misconduct; or who is convicted of any crime involving moral turpitude. When such conviction is final the employee shall have no recourse to appeal to the Council. The appointing authority may, after written notice, suspend any employee without pay for delinquency or misconduct, for a period not to exceed thirty calendar days in any one calendar year. The appointing authority may separate any employee, without prejudice, because of lack of funds or curtailment of work. No permanent employee, however, shall be separated while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the same agency. The order of separations due to reduction of force shall be based upon service ratings and seniority, under a formula to be formally established by the supervisor and approved by the Council, and all such separations shall be reported to the supervisor. (1941, c. 378, s. 11.)

§ **126-13. Appeal from dismissal, suspension, or demotion.**—A permanent employee who is dismissed, suspended, or demoted shall have the right to appeal to the Council not later than thirty days after the effective date of the dismissal, suspension, or demotion. Such appeal shall be in writing and shall be transmitted to the supervisor who shall arrange a formal hearing before the Council within ten days after receipt of the appeal. The supervisor shall furnish the personnel officer of the agency concerned with a copy of the appeal in advance of the hearing. Both the employee and his immediate supervisor shall be notified reasonably in advance of the hearing and shall have the right to present witnesses and give evidence before the Council. The Council, within three days after the hearing, shall make its recommendations in writing to the appointing authority for consideration by the agency. After consideration of the Council's recommendations, the agency shall make its decision which shall be final and which shall be duly recorded in the permanent records of the agency. The personnel officer shall, in writing, promptly notify the employee of the agency's decision. (1941, c. 378, s. 12.)

§ **126-14. Authority of Merit System Council.**—The Merit System Council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in co-operation with the State Board of Health and the State Board of Charities and Public Welfare, for the administration of a system of personnel standards on a merit rating system with a uniform schedule of compensation for all employees of the county welfare departments and the county, city, and district health departments. (1941, c. 378, s. 13.)

§ **126-15. Application of chapter.**—Wherever the provisions of any law of the United States, or of any rule, order or regulation of any federal agency or authority, providing or administering federal funds for use in North Carolina, either directly or indirectly or as a grant-in-aid, or to be matched or otherwise, impose other or higher, civil service or merit standards or different classifications than are required by the provisions of this chapter, then the provisions of such laws, classifications, rules or regulations of the United States or any federal agency may be adopted by the Council as rules and regulations of the Council and shall govern the class of employment and employees affected thereby, anything in this chapter to the contrary notwithstanding. (1941, c. 378, s. 14; 1947, c. 781.)

Editor's Note. — The 1947 amendment substituted "United States" for "United State."

§ **126-16. Effect on certain existing laws.**—Nothing in this chapter shall be construed as repealing any of the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the General Assembly of 1949, relating to the State Personnel Department, nor as relieving the State Personnel Director and the State Personnel Council of the duties and responsibilities prescribed therein for the State Personnel Director and the State Personnel Council. (1941, c. 378, s. 15; 1949, c. 718, s. 4.)

Editor's Note. — The 1949 amendment rewrote this section.

§ **126-17. Purpose of chapter clarified.**—It is the intent and purpose of this chapter to permit and require the agencies and departments affected hereby to comply with the rules and regulations of the Federal Social Security Board and such other federal agencies as may be charged with the administration of the Social Security Act, and the rules governing the expenditure of federal and State social security funds in the administration of said laws. (1941, c. 378, s. 16.)

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ARTICLE 1.

Classification of Militia.

§ **127-1. Composition of militia.**—The militia of the State shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than seventeen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into three classes: the national guard, the naval militia, and the unorganized militia. (1917, c. 200, s. 1: C. S., s. 6791; 1949, c. 1130, s. 1.)

Editor's Note. — The 1949 amendment substituted "seventeen years" for "eighteen years."

§ **127-2. Composition of national guard.**—The national guard shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. (1917, c. 200, s. 2; C. S., s. 6792; 1949, c. 1130, s. 1.)

Editor's Note. — The 1949 amendment substituted "seventeen" for "eighteen".

§ **127-3. Composition of naval militia.**—The naval militia shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (marine corps branch), provided the service is continuous. (1917, c. 200, s. 3; C. S., s. 6793; 1949, c. 1130, s. 1.)

Editor's Note. — The 1949 amendment substituted "seventeen" for "eighteen" in line three.

§ **127-4. Composition of unorganized militia.**—The unorganized militia shall consist of all other able-bodied male citizens of the State and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than seventeen years of age, and, except as otherwise provided by law, not more than forty-five years of age. (1917, c. 200, s. 4; C. S., s. 6794; 1949, c. 1130, s. 1.)

Editor's Note. — The 1949 amendment substituted "seventeen years" for "eighteen years".

§ **127-5. Exemption from military duty.**—The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, custom-house clerks, persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals, and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from military duty without regard to age, and all persons who, because of religious belief, shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be noncombatant. (1917, c. 200, s. 5; C. S., s. 6795.)

§ **127-6. White and colored enrolled separately.**—The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while permitted to be organized, colored troops shall be under command of white officers. (1917, c. 200, s. 6; C. S., s. 6796.)

§ **127-7. Maintenance of other troops.**—In time of peace the State shall maintain only such troops as may be authorized by the President of the United States; but nothing contained in this chapter shall be construed as limiting the rights of the State in the use of the national guard within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of State police or constabulary. (1917, c. 200, s. 8; C. S., s. 6797.)

§ **127-8. Corps entitled to retain privileges.**—Any corps of artillery, cavalry, or infantry existing in the State on the passage of the act of Congress of May eighth, one thousand seven hundred and ninety-two, which by the laws, customs, or usages of the State has been in continuous existence since the passage of such act, under its provisions and under the provisions of section two hundred and thirty-two and sections one thousand six hundred and twenty-five to one thousand six hundred and sixty, both inclusive, of title sixteen of the revised statutes of one thousand eight hundred and seventy-three and the act of Congress of January twenty-first, one thousand nine hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. (1917, c. 200, s. 87; C. S., s. 6798.)

Article 2.

General Administrative Officers.

§ **127-9. Governor as commander-in-chief.** — The Governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasions. (1917, c. 200, s. 11; C. S., s. 6799.)

Cross Reference.—As to commander-in-chief of the militia, see Art. III, § 8, and Art. XII, § 3, of the Constitution.

§ **127-10. Commander-in-chief to prescribe regulations.**—The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto. (1917, c. 200, s. 36; C. S., s. 6800.)

§ **127-11. Division of military staff.**—The military staff shall be divided into two kinds: The personal staff of the Governor and the administrative staff. The Governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the Governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the Secretary of War for the national guard and the Secretary of the Navy for the naval militia. (1917, c. 200, s. 12; C. S., s. 6801.)

§ **127-12. Adjutant General.**—The Governor shall appoint an Adjutant General, which appointment shall carry with it the rank of major general. No person shall be appointed as Adjutant General who has had less than five years commissioned service in the national guard, naval militia, regular army, United States navy or marine corps, or organized reserve corps of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia, or organized reserve corps of the United States. (1917, c. 200, s. 14; C. S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225.)

Editor's Note. — The 1939 amendment made this section applicable to the organized reserve corps of the United States, and the 1949 amendment rewrote the section.

§ **127-13. Salary of Adjutant General.**—The salary of the Adjutant General shall be six thousand dollars per annum. The Adjutant General shall reside at the State capital during his term of office. (1879, c. 240, s. 10; 1883, c. 283, s. 2; Code, ss. 3275, 3730; 1899, c. 390, ss. 2, 3; Rev., s. 2750; 1907, c. 803,

s. 1; 1911, c. 110, s. 1; 1915, c. 118; C. S., s. 3877; Ex. Sess. 1921, c. 53; 1933, c. 282, s. 6; 1935, c. 293; 1937, c. 415; 1943, c. 499, s. 2½.)

Editor's Note. — The 1937 amendment increased the salary from four thousand five hundred to five thousand dollars, and the 1943 amendment increased it to six thousand dollars.

§ **127-14. Adjutant General's department.**—There shall be an Adjutant General's department. The Adjutant General shall be the head of the department and as such subordinate only to the Governor in matters pertaining thereto. He shall make such returns and reports to the Secretary of War and Secretary of the Navy or to such officers as the Secretary of War and Secretary of the Navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make an annual report to the Governor on or before the thirty-first day of December of each year, including a detailed statement of all expenditures made for military purposes during that year. He shall also make a biennial report to the General Assembly. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the State. The Adjutant General shall perform such other duties not herein specified as may be required by the military laws and regulations or by the Governor. The Adjutant General shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The Adjutant General may have an assistant and such clerks and employees as may be prescribed by the Governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the Governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. (1917, c. 200, s. 13; C. S., s. 6803; 1927, c. 217, s. 4.)

§ **127-15. Property and disbursing officer for the United States.**—The Governor of the State shall appoint, designate, or detail, subject to the approval of the Secretary of War, an officer of the national guard of the State, who shall be regarded as property and disbursing officer for the United States. In consideration of his services, for the care, responsibility, and issue of federal property, the property and disbursing officer for the United States shall receive from the State such salary as the Governor may authorize to be just and proper; the salary to constitute a charge upon the appropriations made to the Adjutant General's department. When ordered into actual service and receiving the pay of his rank for such service, from either State or federal funds, he shall not be entitled to, or receive, any salary from the State for the period of time for which he shall receive the pay of his rank. (1917, c. 200, s. 24; C. S., s. 6804.)

§ **127-16. Property and disbursing officer for North Carolina.**—The disbursing officer for the national guard shall be an employee of the Adjutant General's department and he shall be required to give a good and sufficient bond to the State, the amount thereof, to be determined by the Governor, for the faithful performance of his duties and for the safekeeping and proper disposition of such funds and property entrusted to his care. He shall receipt for and account for all funds and property allotted to his custody from the appropriation for military purposes, by the State, and shall make such returns and reports through the Adjutant General concerning same as may be required by the Governor or State laws. All or any disbursement of such moneys will be made by the disbursing officer, only upon the approval of the Adjutant General, upon such forms and under such regulations as may be prescribed by proper authority. Blank forms, books, stationery, and other necessary equipment, for use of the disbursing officer will be furnished through or by the Adjutant General's department. Funds from the appropriation for military purposes will be paid to the disbursing officer by the State Treasurer upon requisition of the Adjutant General on the State Treasurer in accordance with the State laws, or regulations thereunder as prescribed by the State for the expenditure of appropriations made to the State departments. (1917, c. 200, s. 25; C. S., s. 6805; 1929, c. 317, s. 1.)

§ **127-17. Inspector General.**—It is the duty of the Inspector General to inspect organizations and departments pertaining to the national guard; he shall also inspect and audit the accounts of officers accountable or responsible for public funds, and perform such other duties as the Governor shall from time to time direct. The Inspector General shall make reports to the Governor at such times and in such a manner as the Governor shall specify. (1917, c. 200, s. 26; C. S., s. 6806.)

§ **127-18. Advisory board.**—There shall be an advisory board composed of the brigade commander, the commanding officer of each regiment, and the commanding officer of each separate battalion, which shall meet once each year at such time as ordered by the Governor, and at such other times and places as may be ordered by the Governor. This board shall make such recommendations to the Governor as it may deem for the best interests of the national guard. The Adjutant General and the United States property and disbursing officer shall furnish such information as may be requested by the board. (1917, c. 200, s. 27; C. S., s. 6807; 1921, c. 120, s. 1.)

ARTICLE 3.

National Guard.

§ **127-19. Organization of national guard units.**—Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. (1917, c. 200, s. 7; C. S., s. 6808.)

§ **127-20. Location of units.**—The Governor shall determine and fix the location of the units and headquarters of the national guard within the State; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of Congress approved June third, one thousand nine hundred and sixteen, as amended, shall be disbanded without the consent of the President, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the President. (1917, c. 200, s. 9; C. S., s. 6809; 1921, c. 120, s. 2.)

§ **127-21. Reserve battalions for recruit training.**—Under such rules and regulations as may be prescribed by the President, reserve battalions for infantry, cavalry, field artillery, and coast artillery may be organized by the commander-in-chief when organizations of the national guard have been called into the service of the United States in time of war. The organization of such reserve battalions shall be effected in the manner prescribed in section seventy-nine of the act of Congress approved June third, one thousand nine hundred and sixteen, or subsequent federal enactments. (1917, c. 200, s. 10; C. S., s. 6810.)

§ **127-22. Officers appointed and commissioned.**—All officers of the national guard shall be appointed and commissioned by the Governor as follows, viz:

1. The appointment and promotion of all officers shall be by seniority as far as the same is practicable and to the best interests of the service within the organization or department, and in accordance with the regulations of the war department.

2. Original appointments of second lieutenants in the line or staff shall be made from the enlisted men when practicable within the organization. Candidates for such appointment shall make written application, accompanied by their military record, to the commanding officer through intermediate commanders for comment by endorsements in accordance with federal laws and war department regulations pertaining thereto. The commanding officer shall forward the application of the three best qualified and most promising candidates with his endorsement to the Adjutant General's office for consideration by the Governor. (1917, c. 200, s. 15; C. S., s. 6811; 1921, c. 120, s. 3.)

§ **127-23. Commissions for commandants and student officers at educational institutions.**—Whenever any university, college, academy or other educational institution, regularly incorporated under and by virtue of the laws of the State of North Carolina, wherein military science and instruction are made a part of the courses of study and are regularly taught in said institution, and wherein there is detailed by the War Department at Washington, D. C., an officer from the United States army as professor of military science and tactics, which is designated as an Essentially Military School by the War Department of Washington, D. C., and which has been made a unit of the Senior or Junior Reserve Officers' Training Corps by the War Department at Washington, D. C., the Governor of North Carolina, on the application of the said university, college, academy or other educational institution, signed by the chancellor, president, superintendent or other presiding officer, under the seal of the said institution, is hereby authorized and directed to commission as staff officers of the North Carolina reserve militia, the officers of the said university, college, academy or other educational institution, as follows: The chancellor, president, superintendent or other presiding officer, as colonel; the vice-president, principal or other officer second in authority, as lieutenant-colonel; the commandant, or officer in charge of the discipline, as major; and the male professors, members of the faculty, as captains. The persons to whom commissions are issued under this section shall have no connection with the national guard or other military forces of the State, nor shall they, or any of them, exercise any military authority other than in the discharge of their duties in their respective institutions. The Governor may annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the Adjutant General, one on the recommendation of the State Superintendent of Public Instruction, and one on the recommendation of the Secretary of the State Board of Health, with a view to their proficiency in the several departments indicated, and the said committee shall during the school year, and while the said institutions are in session, visit all of the said educational institutions and make a thorough inspection of their military departments, their discipline, courses of study and educational departments, and their sanitary condition, and report to the Governor the result of said inspection. (1919, c. 265, ss. 1, 2, 3; C. S., s. 6812; 1929, c. 61, s. 1.)

§ **127-24. Appointment of staff officers.**—No person shall be appointed a staff officer, including officers of the pay, inspection, subsistence, and medical departments, unless he shall have had previous military experience, nor who shall fail to qualify as to fitness for military service under such regulations as the Secretary of War shall prescribe; such officers shall hold their positions until they have reached the age of sixty-four years, unless separated from the service prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for the purpose. Vacancies among such officers shall be filled by appointment from the officers of the militia. (1917, c. 200, s. 16; C. S., s. 6813.)

§ **127-25. Qualifications of national guard officers.**—Persons hereinafter commissioned as officers of the national guard shall not be recognized as such under any of the provisions of this chapter unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in this article, for officers: Officers or enlisted men of the national guard, officers active or retired, reserve officers, and former officers of the army, navy, and marine corps, enlisted men and former enlisted men of the army, navy or marine corps, who have received an honorable discharge therefrom, graduates of the United States military and naval academies and graduates of schools, colleges, universities, and officers' training camps where they have received military instruction under the supervision of an officer of the regular army who certified their fitness for appointment as commissioned officers, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. (1917, c. 200, s. 17; C. S., s. 6814; 1921, c. 120, s. 4.)

§ **127-26. Test as to fitness for officers.** — No person shall hereafter be appointed an officer of the national guard unless he first shall have successfully passed such test as to his physical, moral, and professional fitness as the President shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of three commissioned officers appointed by the Secretary of War from the regular army or the national guard, or both. (1917, c. 200, s. 18; C. S., s. 6815.)

§ **127-27. Precedence of relative rank among officers of same grade in active national guard.** — Between officers of the same grade in the active national guard, precedence, or relative rank, is determined in the following manner:

(a) According to the date of rank, which is the date of rank stated in his commission.

(b) When dates of rank are the same, according to length of active commissioned service, continuous or otherwise, in the national guard of the United States and in the army of the United States, not counting as service time spent on any supernumerary or retired list, or in the national guard reserve or officers' reserve corps in an inactive status.

(c) When dates of rank and length of active commissioned military service are the same, first according to age, the older taking precedence; second, by lot. (1917, c. 200, s. 19; C. S., s. 6816; 1921, c. 120, s. 5; 1927, c. 227, s. 1.)

Editor's Note. — The 1921 and 1927 amendments rewrote this section.

§ **127-28. Oath of national guard officers.**—Commissioned officers of the national guard shall take and subscribe to the following oath of office: "I, ..., do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of .... in the national guard of the United States and of the State of North Carolina, upon which I am about to enter: so help me, God." (1917, c. 200, s. 20; C. S., s. 6817.)

§ **127-29. Elimination and disposition of officers.**—At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board of three commissioned officers senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such officer, he shall be discharged. Commissions of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of such guard rendered surplus by disbandment of their organization may, upon their own request, be transferred to an inactive status. (1917, c. 200, s. 28; C. S., s. 6818.)

§ **127-30. Retirement of officers.**—Retirement of officers shall be regulated so as to conform to federal laws and regulations of the United States relating to retirement of national guard officers. (1917, c. 200, s. 29; C. S., s. 6819; 1949, c. 1130, s. 2.)

Editor's Note. — The 1949 amendment rewrote this section.

§ **127-31. Enlistments in national guard.**—Original enlistments in the national guard shall be for a period of three years and subsequent enlistments for a period of one year each, or for such periods as may be prescribed by the Secretary of War: Provided, that persons who have served in the army for not less than six months, and have been honorably discharged therefrom, may, within two years after June four one thousand nine hundred and twenty, enlist in the national guard for one year, and re-enlist for like period: Provided, that qualifications for enlistment shall be the same as those prescribed for admission to the regular army. (1917, c. 200, s. 30; C. S., s. 6820; 1921, c. 120, s. 6.)

§ **127-32. Enlistment contract.**—Enlisted men shall not be recognized as members of the national guard until they shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted, this ...... day of ......, 19.., as a soldier in the national guard of the United States and of the State of North Carolina, for the period of three, [or one] years in service, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and to the State of North Carolina, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and of the Governor of the State of North Carolina, and of the officers appointed over me according to law and the rules and articles of war." (1917, c. 200, s. 31; C. S., s. 6821; 1921, c. 120, s. 7.)

§ **127-33. Discharge of enlisted men.**—An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the regular army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by proper authority. (1917, c. 200, s. 32; C. S., s. 6822.)

§ **127-34. Membership continued in the national guard.**—When drafted into federal service and discharged from the army, members shall resume their membership in the national guard, and shall continue to serve in the national guard until the dates upon which their enlistments entered into prior to their draft would have expired if uninterrupted. (1921, c. 120, s. 8; C. S., s. 6822 (a).)

§ **127-35. Discipline of national guard.**—The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the regular army, and the training shall be carried out so as to conform to the provisions of an act of Congress approved June third, one thousand nine hundred and sixteen, and subsequent federal enactments. (1917, c. 200, s. 33; C. S., s. 6823.)

§ **127-36. Uniform and equipment of national guard.**—The national guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is or shall be provided for the regular army. (1917, c. 200, s. 37; C. S., s. 6824.)

§ **127-37. Authority to wear service medals.**—The officers and enlisted men of the North Carolina national guard are hereby authorized to wear, as a part of the official uniform service medals to be selected as herein prescribed.

The Adjutant General of the State of North Carolina is hereby authorized and directed to appoint a committee from the officer personnel of the North Carolina national guard to be composed of three regimental commanders, and two other officers of the national guard, to act as a committee to select suitable State service medals to be worn by the officers and enlisted men of the North Carolina national guard as a part of the regulation uniform. (1939, c. 344.)

§ **127-38. Courts-martial for national guard.** — Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. (1917, c. 200, s. 55; C. S., s. 6825.)

§ **127-39. General courts-martial.**—General courts-martial of the national guard not in the service of the United States may be convened by orders of the President, or of the Governor of the State, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S., s. 6826.)

§ **127-40. Special courts-martial.**—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States; and such special courts-martial shall have the same powers of punishment as the general courts-martial, except that fines imposed by such courts shall not exceed one hundred dollars. (1917, c. 200, s. 57; C. S., s. 6827.)

§ **127-41. Summary courts-martial.**—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and the court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense; may sentence noncommissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States. (1917, c. 200, s. 58; C. S., s. 6828.)

§ **127-42. Powers of courts-martial.**—All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each dollar of fine authorized. (1917, c. 200, s. 59; C. S., s. 6829; 1949, c. 1130, s. 3.)

Editor's Note. — The 1949 amendment deleted a provision relating to confinement in jail.

§ **127-43. Procedure of courts-martial.**—In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpœnas and subpœnas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court. (1917, c. 200, s. 60; C. S., s. 6830.)

§ **127-44. Manual of courts-martial.**—Trials and proceedings by all courts and boards shall be in accordance with the plan and procedure laid down in the manual of courts-martial, courts of inquiry, and retiring boards, and other procedures under military law, as may from time to time be prescribed by the Secretary of War. (1917, c. 200, s. 64; C. S., s. 6831.)

§ **127-45. Sentences, where executed.**—All sentences to confinement imposed by any military court of this State shall be executed in such prisons as the court may designate. (1917, c. 200, s. 61; C. S., s. 6832.)

§ **127-46. Execution of process and sentences.** — All processes and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, constable, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the State to another, when the same is authorized and directed by the Adjutant General of the State, shall be paid from the military fund of the State upon a warrant approved by the Adjutant General. (1917, c. 200, s. 62; C. S., s. 6833.)

§ **127-47. Commitments.**—When any sentence to fine or imprisonment shall be imposed by any military court of this State, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this State. (1917, c. 200, s. 63; C. S., s. 6834.)

§ **127-48. Sentence of dismissal.**—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C. S., s. 6835.)

Article 4.

Naval Militia.

§ **127-49. Organization and equipment.**—The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the Secretary of the Navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the Secretary of the Navy. (1917, c. 200, s. 66; C. S., s. 6836.)

§ **127-50. Officers appointed to naval militia.**—Officers of the United States navy and marine corps may, with the approval of the Secretary of the Navy, be elected or appointed and commissioned as officers of the naval militia. (1917, c. 200, s. 67; C. S., s. 6837.)

§ **127-51. Officers assigned to duty.**—Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only. (1917, c. 200, s. 68; C. S., s. 6838.)

§ **127-52. Discipline in naval militia.**—The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the State, or on any vessel on which such forces are training, whether within or without the State, or wherever, either within or without the State, naval militia forces of the State shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. (1917, c. 200, s. 69; C. S., s. 6839.)

§ **127-53. Disbursing and accounting officer.**—The Governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the Secretary of the Navy, to perform such duties as the Secretary of the Navy may prescribe. The Governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units. (1917, c. 200, s. 70; C. S., s. 6840.)

§ **127-54. Rendition of accounts.**—Accounting officers shall render account as prescribed by the Governor or by the Secretary of the Navy, and shall be required to give good and sufficient bond to the State and to the United States, in such sums as the Governor or the Secretary of the Navy may direct, and conditioned upon the faithful accounting for all public property and for the safekeeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed. (1917, c. 200, s. 71; C. S., s. 6841.)

§ **127-55. Disbandment of naval militia.**—No part of the naval militia which is entitled to compensation under the provisions of an act of Congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the President. (1917, c. 200, s. 86; C. S., s. 6842.)

§ **127-56. Courts-martial for naval militia.**—Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts. (1917, c. 200, s. 72; C. S., s. 6843.)

§ **127-57. General courts-martial.**—General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the Governor. (1917, c. 200, s. 73; C. S., s. 6844.)

§ **127-58. Summary courts-martial.**—Summary courts-martial may be ordered by the Governor, or by the commanding officers of a naval militia battalion or brigade. (1917, c. 200, s. 74; C. S., s. 6845.)

§ **127-59. Deck courts.**—Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the State or on any vessel on which said forces may be serving. (1917, c. 209, s. 75; C. S., s. 6846.)

§ **127-60. Jurisdiction and procedure of courts-martial and deck courts.**—The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts-martial provided for in the navy of the United States; and the proceedings of the courts-martial of the naval militia shall follow the forms and modes of procedure prescribed for such courts in the navy of the United States. (1917, c. 200, s. 76; C. S., s. 6847.)

§ **127-61. Place of holding courts.**—Every precept or order for the convening of any such court may authorize the court to sit at any place or places within the territorial limits of the State as the convening authority may designate, and may further provide that any such court may be convened and sit on board any such naval or other vessel, wherever the same from time to time happens to be, or at such place or places ashore, outside the territorial limits referred to above, as in the judgment of the said convening authority may be convenient or desirable for the purposes of such courts-martial. (1917, c. 200, s. 77; C. S., s. 6848.)

§ **127-62. Powers of general courts-martial.**—General courts-martial shall have power to impose fines not exceeding two hundred dollars, to sentence to forfeiture of pay and allowances, to a reprimand, to dismissal or dishonorable discharge from the service, to reduction in rank or rating; or any two or more of such punishments may be conbined in the sentences imposed by such courts. (1917, c. 200, s. 78; C. S., s. 6849.)

§ **127-63. Powers of summary courts-martial.** — Summary courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred dollars. (1917, c. 200, s. 79; C. S., s. 6850.)

§ **127-64. Powers of deck courts.**—Deck courts may impose fines not exceeding fifty dollars for any single offense; may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than dishonorable discharge, or a fine in addition to any one of the other sentences specified. (1917, c. 200, s. 80; C. S., s. 6851.)

§ **127-65. Process of courts-martial.** — Presidents of general courts-martial, senior members of summary courts-martial, and deck court officers of the naval militia shall have the power to issue warrants to arrest accused persons, and to bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer, all as authorized for similar proceedings for courts-martial in the navy of the United States. He shall also have power to punish for contempt occurring in the presence of the court. All processes, warrants, and sentences of such courts shall be executed by any sheriff or deputy sheriff or any constable or police officer of any township, county, city, or town, who shall be authorized by law to execute or serve any civil or criminal process. (1917, c. 200, s. 83; C. S., s. 6852.)

§ **127-66. Sentence to confinement in lieu of fines.**—All courts-martial of the naval militia, including deck courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed, and shall have the power to direct that upon nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences to confinement shall not exceed one day for each dollar of fine authorized. When naval militia forces are embarked on any vessel, the confinement in whole or in part may be had in prisons provided on said ship. (1917, c. 200, s. 81; C. S., s. 6853.)

§ **127-67. Dismissal or dishonorable discharge.**—No sentence of dismissal or dishonorable discharge from the naval militia shall, except when the naval militia shall have been called into the service of the United States, be executed without the approval of the Governor. (1917, c. 200, s. 82; C. S., s. 6854.)

§ **127-68. Collection of fines.**—The amount of any fine imposed under sentence of the courts heretofore named on any member of the naval militia may be collected from him, or may be deducted from any amount due said member as accrued pay. (1917, c. 200, s. 84; C. S., s. 6855.)

§ **127-69. Courts of inquiry.**—Courts of inquiry in the naval militia shall be instituted, constituted, and conducted in the same manner and shall have like powers and duties as similar courts in the navy of the United States, except that they shall be ordered by the Governor. (1917, c. 200, s. 85; C. S., s. 6856.)

Article 5.

Regulations as to Active Service.

§ **127-70. National guard and naval militia first ordered out.**—In all cases the national guard and naval militia as provided for in this chapter shall be first ordered into service. (1917, c. 200, s. 44; C. S., s. 6857.)

§ **127-71. Regulations enforced on actual service.**—Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the articles of war, and articles for the government of the navy, governing the army and navy of the United States, and the regulations prescribed for the army and navy of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such articles of war and articles for the government of the navy are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war and articles for the government of the navy or regulations or laws governing the United States army and navy or the customs and usages thereof; but no punishment under such rules and articles which will extend to the taking of life shall in any case be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the Governor to exist, and then only after approval by the Governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the Governor for that purpose. (1917, c. 200, s. 45; C. S., s. 6858.)

§ **127-72. Regulations governing unorganized militia.**—Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia. (1917, c. 200, s. 35; C. S., s. 6859.)

ARTICLE 6.

Unorganized Militia.

§ **127-73. Unorganized militia ordered out for service.** — The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the national guard reserve, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this State or a part thereof is called forth under the Constitution and laws of the United States, the Governor shall first order out for service the national guard or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their State designations shall not be given to new organizations. (1917, c. 200, s. 46; C. S., s. 6860.)

§ **127-74. Manner of ordering out unorganized militia.** — The Governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard or naval militia, or organize them into separate brigades, regiments, battalions, companies, separate corps, batteries, troops, or divisions, as may be best for the service. (1917, c. 200, s. 47; C. S., s. 6861.)

§ **127-75. Draft of unorganized militia.**—If the unorganized militia is ordered out by draft, the Governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same. (1917, c. 200, s. 48; C. S., s. 6862.)

§ **127-76. Punishment for failure to appear.** — Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine. .(1917, c. 200, s. 49; C. S., s. 6863.)

§ **127-77. Promotion of marksmanship.**—The Adjutant General is authorized to detail a commissioned officer of the North Carolina national guard or member of the unorganized militia to promote rifle marksmanship among the unorganized militia of the State. Such officer or member of the unorganized militia so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under such rules and regulations as the Adjutant General shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the National Rifle Association. Provided, that such duties and efforts shall in nowise interfere or conflict with clubs of schools or in nowise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of army instructors.

The Adjutant General may reimburse the officer, or member of the unorganized militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the amount appropriated for such purpose by the General Assembly. (1937, c. 449.)

ARTICLE 7.

Pay of Militia.

§ **127-78. Rations and pay on service.**—The militia of the State, both officers and enlisted men, when called into the service of the State, shall be rationed and receive the same pay as when called into the service of the United States. When called in aid of the civil authorities, enlisted men shall receive in addition to such pay the sum of one dollar ($1.00) per day. (1813, c. 850, s. 5, P. R.; R. C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C. S., s. 6864; 1935, c. 452.)

Cross Reference.—As to national guardsmen coming within the Workmen's Compensation Act when on duty, see note to § 127-102.

Editor's Note. — The 1935 amendment increased the pay from sixty cents to one dollar per day.

§ **127-79. Rate of pay for service.**—The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid out of the appropriations made to the Adjutant General's department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular army or navy; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed actual expenses and six dollars ($6.00) per diem for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C. S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4.)

Editor's Note. — The 1935 amendment inserted the next to the last sentence, and the 1949 amendment increased the per diem from "four" to "six" dollars.

§ **127-80. Paid by the State.** — When the militia or any portion thereof shall be called into service to execute the law, suppress riots or insurrections, and to repel invasions, the pay, subsistence, transportation, and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor and warrant of the auditor. (1917, c. 200, s. 52; C. S., s. 6866.)

Editor's Note. — In Worth v. Commissioners, 118 N. C. 112, 24 S. E. 778 (1896) it was held in construing the prior law that the State should pay the cost of the militia when it is called out by the Governor to aid a sheriff in executing a writ of possession. And in Commissioners v. Commissioners, 75 N. C. 240 (1876) it was said that a county could not recover back money voluntarily paid for the upkeep of the militia while in its service, although there was no debt and the county could not have been forced to pay.

§ 127-81. Pay of general and field officers.—General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C. S., s. 6867.)

§ 127-82. Pay and care of soldiers injured in service.—A member of the national guard and naval militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while in line of duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual necessary expenses for care and medicine and medical attendance, to be paid out of the contingency and emergency fund, or such other fund as may be designated by law. (1917, c. 200, s. 54; C. S., s. 6868.)

ARTICLE 8.

Privilege of Organized Militia.

§ 127-83. Leaves of absence for State officers and employees.—All officers and employees of the State, including superintendents, principals, and teachers in the public schools of the State, who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the President of the United States. (1917, c. 200, s. 88; C. S., s. 6869; 1937, c. 224, s. 1; 1949, c. 1274.)

Editor's Note. — The 1937 amendment made this section applicable to the officers reserve corps, the enlisted reserve corps and the naval reserves. And the 1949 amendment inserted the words "including superintendents, principals, and teachers in the public schools of the State."

§ 127-84. Contributing members.—Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership, which certificate shall exempt the holder from jury duty. (1917, c. 200, s. 90; C. S., s. 6871.)

Cross Reference. — As to section not being applicable to personnel and units of State guard, see § 127-111, subsection 6.

§ 127-85. Organizations may own property; actions.—Organizations of the national guard and naval militia shall have the right to own and keep real and personal property, which shall belong to and be under the control of the members of the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the State having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (1917, c. 200, s. 92; C. S., s. 6872.)

Cross Reference. — As to section not being applicable to personnel and units of State guard, see § 127-111, subsection 6.

§ **127-86. When families of soldiers supported by county.**—When any citizen of the State is absent on duty as a member of the national guard or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1917, c. 200, s. 93; C. S., s. 6873.)

ARTICLE 9.

Care of Military Property.

§ **127-87. Custody of military property.**—All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody, except as above specified. (1917, c. 200, s. 38; C. S., s. 6874.)

§ **127-88. Property deposited in arsenal.**—All the public arms of every description which may not be distributed among the militia according to law shall be deposited and kept in the public arsenal established at Raleigh. (1917, c. 200, s. 39; C. S., s. 6875.)

§ **127-89. Arsenal provided.**—The Board of Public Buildings and Grounds shall provide a suitable building for an arsenal for the storage of military and other property. (1917, c. 200, s. 96; C. S., s. 6876.)

§ **127-90. Property kept in good order.**—Every noncommissioned officer and private belonging to any company equipped with public arms shall keep and preserve his arms and accouterments in good order and in a soldierly manner; and for every neglect to do so may be punished as a court-martial may direct. (1917, c. 200, s. 40; C. S., s. 6877.)

§ **127-91. Horses and vehicles used only for military purposes.** — Horses, motor trucks, and other vehicles issued by the Secretary of War to the national guard shall be used solely for military purposes. Necessary expense in maintaining such horses, trucks, or vehicles, not provided for by the federal government to include stables, storage, and other incidental expenses, shall be a proper charge against funds appropriated for the national guard: Provided, such expense shall be specifically authorized by the Governor and certified to by the Adjutant General. (1917, c. 200, s. 41; C. S., s. 6878; 1921, c. 120, s. 9.)

§ **127-92. Transfer of property.**—All officers accountable or responsible for public funds, property, or books, before being relieved from the duty shall turn over the same according to the regulations prescribed by the Governor. (1917, c. 200, s. 42; C. S., s. 6879.)

§ **127-93. Replacement of lost or damaged property.**—Whenever any military property issued to the militia of the State shall have been lost, damaged, or destroyed, and upon report of a disinterested survey officer of the regular army, navy or the militia it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable and responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and State funds at any time accruing may be stopped and applied to the payment of any such indebtedness until the same is discharged. In addition thereto any officer accountable or responsible for military property shall be liable on his bond to the State and the property and disbursing officer or accounting officer for any lost, damaged, or destroyed property for which he is accountable or responsible. (1917, c. 200, s. 43; C. S., s. 6880.)

§ **127-94. Injuring military property.**—If any person shall wantonly or willfully injure or destroy any arms, equipment, or other military property of the State, and refuse to make good such injury or loss, or shall sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than one hundred dollars or imprisoned not more than six months, or both. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., s. 3536; C. S., s. 6881.)

§ **127-95. Member of national guard failing to return property.**—If any member of the North Carolina national guard shall willfully fail to return any property of the State or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3537; C. S., s. 6882.)

§ **127-96. Selling accouterments.**—If any person shall sell, dispose of, pawn or pledge, destroy or injure, or willfully retain after demand made, any public property issued for the purpose of arming or equipping the national guard or militia of the State, he shall be guilty of a misdemeanor. (Code, s. 3274; 1893, c. 374, s. 30; Rev., s. 3541; C. S., s. 6883.)

§ **127-97. Selling public arms.**—If any person to whom shall be confided public arms or accouterments shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor. (1831, c. 45, s. 5; R. C., c. 89, s. 8; Code, s. 3556; Rev., s. 3542; C. S., s. 6884.)

§ **127-98. Refusing to deliver public arms on demand.**—Every commissioned officer of the militia, whenever and wherever he shall see or learn that any of the arms or accouterments or other military property belonging to the State is in the possession of any person other than in whose hands they may be placed for safekeeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer he shall be guilty in like manner, and punished in like manner as for selling or embezzeling public arms. (1831, c. 45, s. 7; R. C., c. 89, s. 10; Code, s. 3558; Rev., s. 3540; C. S., s. 6885.)

§ **127-99. Expenses of shipping and handling military property.**—The freight charges and expenses of packing and handling military property and equipment for shipping to and from the State arsenal shall be paid from funds appropriated to the Adjutant General's department. (1917, c. 200, s. 95; C. S., s. 6886.)

ARTICLE 10.

Support of Militia.

§ **127-100. Requisition for federal funds.** — The Governor shall make requisition upon the Secretary of War for such State allotment from federal funds as may be necessary for the support of the militia. (1917, c. 200, s. 23; C. S., s. 6887; 1921, c. 120, s. 10.)

§ **127-101. County appropriations.**—The county commissioners may appropriate such sums of money to the various organizations of the national guard or naval militia in their counties and at such times as the board may deem proper. (1917, c. 200, s. 91; C. S., s. 6888.)

§ **127-102. Allowances made to different organizations.**—There shall be allowed each year to the following officers, under rules and regulations prescribed by the Adjutant General, as follows: To the commanding general of a division, group and regimental commanders, commanding officers of separate battalions, squadrons, or similar organizations, not to exceed two hundred and twenty-five dollars ($225.00); to commanding officers of battalions or similar organizations being a part of the regiment, not to exceed one hundred dollars ($100.00); to commanding officers of companies, batteries, troops, detachments and similar units not to exceed two hundred dollars ($200.00); to lieutenants serving with units, not to exceed one hundred dollars ($100.00); to regimental adjutants, plans and training officers, and adjutants of separate battalions, squadrons, and similar organizations, not to exceed one hundred dollars ($100.00). No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

There shall be allowed annually to each company, battery, troop, and similar organizations federally recognized under regulations prescribed by the war department in its tables of organization for the national guard, not to exceed the sum of one thousand and five hundred dollars ($1,500.00), to be applied to the payment of armory rent, heat, light, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the Adjutant General.

There shall be allowed annually to the supply sergeant of each company, battery, and troop, and to a petty officer of each division of naval militia, aeronautic section, and to supply sergeants of similar units, the sum of one hundred dollars ($100.00). There shall be paid monthly to stable sergeants the sum of fifteen dollars ($15.00), and to horseshoers ten dollars ($10.00), of units entitled to and actually having animals to care for.

Each enlisted man belonging to an organization of the national guard shall receive fifty cents as compensation for each armory drill, not exceeding sixty (60) drills per annum, ordered for his organization, where he is officially present and in which he participates, the said compensation to be paid in the same manner and under such laws and regulations as now or hereafter may be prescribed by the United States government or by the war department therefor for pay for national guard enlisted men: And provided further, that the appropriation made by the State of North Carolina for the support of the national guard is sufficient, after the payment of other necessary expenses of maintaining said guard, to make such payment.

All payments are to be made by the State disbursing officer in semiannual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and has pursued such course of instruction as may from time to time be required.

The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations.

There shall be allowed annually to each of the following federally recognized organizations of the national guard the sum of four hundred dollars ($400.00) to be applied by the commanding officers of such organizations to the payment of necessary administrative expenses in accordance with rules and regulations prescribed by the Adjutant General: Commanding officer, corps artillery; commanding officers, infantry regiments, 30th Infantry Divisions; commanding officers, field artillery groups; commanding officers, separate field artillery battalions, 30th Infantry Division; commanding officers, separate AAA AW battalions, 30th Infantry Division; commanding officers, separate nondivisional AAA AW battalions; commanding officers, separate nondivisional field artillery battalions; commanding officers, separate nondivisional military police battalions; commanding officers, separate engineer combat battalions; commanding officers, similar organizations to the above. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1949, c. 1130, s. 5; 1951, c. 1144, s. 1.)

Cross Reference. — As to section not being applicable to personnel and units of State guard, see § 127-111, subsection 6.

Editor's Note. — The 1949 amendment rewrote the first paragraph, and substituted $1500.00 for $600.00 in the second paragraph. The 1951 amendment added the last paragraph.

Enlisted Man within Workmen's Compensation Act.—By this and § 127-78 the State has provided for payment in a certain manner to privates who have enlisted in the North Carolina national guard, and a private therein who has taken the prescribed oath is an employee of the State within the meaning of the Workmen's Compensation Act, and where he has sustained an injury arising out of and in the course of the performance of his duties as an enlisted man he is entitled to the compensation prescribed by the statute. Baker v. State, 200 N. C. 232, 156 S. E. 917 (1931).

Article 11.

General Provisions.

§ **127-103. Reports of officers.**—All officers of the national guard and the naval militia shall make such returns and reports to the Governor, Secretary of War, Secretary of the Navy, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed. (1917, c. 200, s. 21; C. S., s. 6890.)

§ **127-104. Officer to give notice of absence.**—When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications. (1917, c. 200, s. 22; C. S., 6891.)

§ **127-105. Articles of war applicable in time of peace.**—The national guard and naval militia, when not in the service of the United States, shall, except as to punishments, be governed respectively by the United States army regulations and articles of war, and the navy regulations and articles for the government of the navy. (1917, c. 200, s. 34; C. S., s. 6892.)

§ **127-106. Commanding officer may prevent trespass and disorder.**—The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place devoted to such duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisance all such sales. (1917, c. 200, s. 94; C. S., s. 6893.)

§ **127-107. Organizing company without authority.**—If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, he shall be guilty of a misdemeanor. (1893, c. 374, s. 38; Rev., s. 3538; C. S., s. 6894.)

§ **127-108. Placing name on muster roll wrongfully.**—If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor. (1893, c. 374, s. 33; Rev., s. 3539; C. S., s. 6895.)

§ **127-109. Protection of the uniform.**—It shall be unlawful for any person not an officer or enlisted man in the United States army, navy, or marine corps to wear the duly prescribed uniform of the United States army, navy or marine corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States army, navy, or marine corps: Provided, that the foregoing provisions shall not be construed so as to prevent officers or enlisted men of the national guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the national guard; nor to prevent members of the organization known as the Boy Scouts of America, or the naval militia, or such other organizations as the Secretary of War may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States army, navy, or marine corps, regular or volunteer, and whose most recent service was terminated by an honorable discharge, mustered out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such regular or volunteer service; nor to prevent any person who has been honorably discharged from the United States army, navy, or marine corps, regular or volunteer, from wearing his uniform from the place of his discharge to his home within three months after his discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers and enlisted men, or both, of the United States army, navy or marine corps, regular or volunteer, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of a duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States army, navy, or marine corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States army, navy, or marine corps, in any playhouse or theater, or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States army, navy, or marine corps: Provided further, that the uniform worn by officers or enlisted men of the national guard, or by the members of the military societies, or the instructors and members of the cadet corps referred to in the preceding proviso, shall include some distinctive mark or insignia to be prescribed by the Secretary of War to distinguish such uniforms from the uniforms of the United States army, navy, or marine corps; and provided further, that the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the United States army, navy, or marine corps, or any insignia of rank similar thereto. Any person who offends against the provisions of this section, shall on conviction, be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. (1921, c. 120, s. 12; C. S., s. 6895(a).)

§ **127-110. Upkeep of camps.**—There shall be paid from the appropriations from the national guard such amounts as may be necessary for the maintenance, upkeep, and improvement of the State camp or camps: Provided, such expenditures shall be approved and authorized by the Governor. (1921, c. 120, s. 13; C. S., s. 6895(b).)

§ **127-110.1. When officers authorized to administer oaths.**—Officers of the national guard are authorized to administer oaths in all circumstances pertaining to any military matter whenever an oath is required. (1949, c. 1130, s. 6.)

Article 12.

State Guard.

§ **127-111. Authority to organize and maintain State guard of North Carolina.**—1. Whenever the President of the United States shall order or call all or any part of the national guard of the State into active federal service, the Governor is authorized, subject to such regulations as the Secretary of War may prescribe, to organize such part of the unorganized militia as a State force, for discipline and training, into companies, battalions, or regiments, as may be deemed necessary for the defense of the State; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be hereafter provided by the State laws for the national guard; to train such force in accordance with training regulations issued by the war department. Such military force to be subject to the call or order of the Governor to execute the law, suppress riots or insurrections, or to repel invasion, as is now or may hereafter be provided by law for the national guard and for the unorganized militia. Units of the State guard will be disbanded upon return of the national guard to State control, or as soon thereafter as practical.

2. Such military force shall be designated as the "North Carolina State guard" and shall be composed of men of the unorganized militia as shall volunteer for service therein, or as shall be drafted as provided by law. Membership in the North Carolina State guard shall be open to men of not less than eighteen and not more than fifty years of age; provided, however, that the members of the band may be composed of men of not less than sixteen and not more than fifty years of age. They shall be additional to and distinct from the national guard organized under existing law. They shall not be required to serve outside the boundaries of this State.

3. The Governor is hereby authorized to prescribe the rules and regulations governing the appointment of officers, the enlistment of men, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the Secretary of War such arms and equipment as may be in possession of and can be spared by the war department, and to extend thereto the facilities of available armories and their equipment and such State premises and property as may be available for the purpose of drill and instruction.

4. Such force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his membership in any such unit or organization be exempted from military service under any federal law.

5. The Governor is hereby authorized to appropriate to the benefit of the State guard any and all unexpended monies found by the Governor to be unnecessary for use of the national guard in the appropriation made to the national guard by the General Assembly, for the present or for subsequent fiscal years and, if necessary, to make allotment of monies from the contingent and emergency fund with the concurrence of the Council of State. Upon the disbandment of the State guard any monies or balance to the credit of the units of this organization shall be paid into the State treasury for the benefit of the national guard, and all property, clothing, and equipment belonging to the State shall be transferred to the account of the national guard for disposition in accordance with the best interests of the State and as deemed advisable by the Governor. Upon the disbandment of any one or more units of the State guard on a date prior to the disbandment of the entire organization, the Governor is authorized to have transferred any State property or balance of funds of said disbanded units to any new unit or units organized to fill such vacancies, or otherwise as the Governor may direct.

6. The North Carolina State guard shall be subject to the military laws of the State not inconsistent with or contrary to the provisions contained in this article with the following exceptions:

The provisions of §§ 127-84, 127-85 and 127-102, as amended, shall not be applicable to the personnel and units of the State guard.

7. (a) There shall be allowed annually to each unit or company of the State guard such funds as may be necessary to be applied to the payment of armory rent, heat, light, stationery, printing, and other expenses. The allowance to each unit annually will not exceed $600.00.

(b) All payments are to made by the Adjutant General in accordance with State laws in semi-annual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named.

(c) The commanding officer of all organizations participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly, when due, the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations. (1941, c. 43; 1943, c. 166; 1945, c. 290, s. 1; 1945, c. 835.)

Editor's Note. — The 1943 amendment inserted the second sentence of subsection 2. The first 1945 amendment struck out "9-19" from the list of inapplicable sections in subsection 6, and the second 1945 amendment inserted the proviso in subsection 2.

Chapter 128.

Offices and Public Officers.

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Article 1.

General Provisions.

§ **128-1. No person shall hold more than one office.**—No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly; provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes. (Const., art. 14, s. 7; Rev., s. 2364; C. S., s. 3200.)

I. General Consideration.
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As to constitutional inhibition against double office holding, see N. C. Const., Art. XIV, § 7, and annotation thereto. As to right of citizens and taxpayers of county to bring action to try right of person to hold two offices at the same time, see note to § 1-515.

I. GENERAL CONSIDERATION.

One person may not hold two offices in violation of article 14, § 7, of the Constitution. Dowtin v. Beardsley, 126 N. C. 119, 35 S. E. 241 (1900). For statute held unconstitutional as requiring the same person to fill two public offices, see Brigman v. Baley, 213 N. C. 119, 195 S. E. 617 (1938).

At common law there was no limit on the right of a citizen to hold several offices, except the incompatibility of the duties of the several offices. Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

Under Constitution. — The question in this State does not turn upon the incompatibility of the duties of the two offices alone, as it did at common law, but upon the plain positive language of the Constitution, art. 14, § 7. Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897); Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

Under art. 14, § 7, an office or place of trust is a public position, involving a delegation to the individual of some part of the sovereign functions of the government to be exercised for the public benefit. State v. Smith, 145 N. C. 476, 59 S. E. 649 (1907).

Acceptance of Second Office Vacates First.—The acceptance of a second office by one already holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which of the two he will retain, his election is deemed to be made when he accepts and qualifies for the second. State v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

Necessity of Taking Oath.—The taking of an oath of office is not an indispensable criterion, for the office may exist without it. State v. Stanley, 66 N. C. 60 (1872); State v. Patrick, 124 N. C. 651, 33 S. E. 151 (1899).

An officer appointed for a definite time to a legislative office has no vested property therein or contract right thereto of which the legislature cannot deprive him. Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903), overruling Hoke v. Henderson, 15 N. C. 1 (1833).

And Legislature May Change Duties and Emoluments.—Although an office is a constitutional one, the legislature may, within reasonable limits, change the statutory duties and diminish the emoluments of such office, if the public welfare requires it. Fortune v. Board, 140 N. C. 322, 52 S. E. 950 (1905); Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269 (1906).

The legislature may attach additional duties to an existing office, and it may afterwards lop off those duties and assign them to a new office, leaving the original office as it was before the additional duties were attached to it. Dowtin v. Beardsley, 126 N. C. 119, 35 S. E. 241 (1900).

In respect to offices created and provided for by the Constitution, the people in convention assembled alone can alter, change their tenure, duties or emoluments, or abolish them; while in respect to legislative offices, it is entirely within the power of the legislature to deal with them as public policy may suggest and public interest may demand. Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903).

"Unless the Constitution otherwise expressly provides, the legislature has power to increase or vary the duties, or diminish the salary or other compensation appurtenant to the office, or abolish any of its rights or privileges before the end of the term, or to alter or abridge the term, or to abolish the office itself." Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897), quoted in Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903).

The legislature may reduce or increase the salaries of such officers as are not protected by the Constitution during their term of office, but cannot deprive them of the whole. Cotten v. Ellis, 52 N. C. 545 (1860).

Manner of Appointment. — Where officers have to be appointed to fill a regular term, the Governor nominates to the Senate, unless it be an officer who is elected by the people, and then he fills the vacancy or term until the people can elect his successor. People v. McIver, 68 N. C. 467 (1873). See also, People v. McKee, 68 N. C. 429, (1873); People v. Bledsoe, 68 N. C. 457 (1873).

The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests, in the absence of provisions to the contrary, in the body possessing the original power of appointment. Greene v. Owen, 125 N. C. 212, 34 S. E. 424 (1899).

Offices whose duties are congruous may be consolidated; but it is just, in cases of consolidation of offices, to postpone the operation of the law until a vacancy appears in the office whose duties are to be transferred. Troy v. Wooten, 32 N. C. 377 (1849).

II. DISTINGUISHING CHARACTERISTICS.

In General. — Public office is tenure by virtue of an appointment, conferred by public authority. Willis v. Melvin, 53 N. C. 62 (1860).

The term embraces the ideas of tenure, duration, emolument and duties. State v. Patrick, 124 N. C. 651, 33 S. E. 151 (1899).

A public office is an agency for the State, and the person whose duty it is to perform this agency is a public officer. State v. Stanley, 66 N. C. 60, 8 Am. Rep. 488 (1872); Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898); State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899).

This is considered to be the true definition of a public officer in its original, broad sense. The essence of it is the duty of performing an agency, that is, of doing some act or acts or series of acts for the State. State v. Stanley, 66 N. C. 60 (1872).

And a Parcel of the Administration of Government. — The true test of a public office is that it is a parcel of the administration of government, or is itself directly created by the lawmaking power. Eliason v. Coleman, 86 N. C. 236 (1882).

Portion of Sovereignty Attaches. — An office or place of trust requiring a proceeding by quo warranto for the amotion of the incumbent is defined as a public position to which a portion of the sovereignty of the country, either legislative, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public. State v. Smith, 145 N. C. 476, 59 S. E. 649 (1907).

Combination of Duty and Agency.—The word "office" in its primary signification implies a duty or duties—the agency from the State to perform the duties. The duties of the office are of first consequence, and the agency from the State to perform those duties is the next step in the creation of an office. It is the union of the two factors, duty and agency, which makes the office. State Prison v. Day, 124 N. C. 362, 32 S. E. 748, 46 L. R. A. 295 (1899).

Distinguished from a Public Agency. — The most important characteristic which distinguishes an office from a public agency is that the conferring of the office carries with it a delegation to the individual of some of the sovereign functions of the government. In this respect the terms "office" and "place of trust" as used in our Constitution are synonymous. Doyle v. Raleigh, 89 N. C. 133, 45 Am. Rep. 677 (1883); Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898); State v. Smith, 145 N. C. 476, 59 S. E. 649 (1907).

Mere Addition of Duties.—An act which merely attaches new duties to existing offices does not create a new office. McCullers v. Board, 158 N. C. 75, 73 S. E. 816 (1911).

Authority to Appoint. — If a person is authorized to appoint to an office, this duty of itself constitutes him a public officer. State v. Stanley, 66 N. C. 60, 8 Am. Rep. 488 (1872), citing Hoke v. Henderson, 15 N. C. 1 (1833); State v. Tate, 68 N. C. 546 (1873).

Distinguished from Employment and Contract.—An "office" is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from "employment" or "contract." Eliason v. Coleman, 86 N. C. 236 (1882); Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

A public office is an administrative agency or public employment, and although an office is an employment, it does not follow that every employment is an office. State v. Smith, 145 N. C. 476, 59 S. E. 649 (1907).

Distinguished from Placemen.—The distinction between officers and placemen is that the former are required to take an oath to support the Constitutions of the State and of the United States; whilst the latter are not. Worthy v. Barrett, 63 N. C. 199 (1869).

III. GENERAL ILLUSTRATIONS.

Governor and Others in Executive Department.—The executive department is an agency for the State, and the Governor and others, whose duty it is to discharge this agency, are public officers. State v. Stanley, 66 N. C. 60 (1872).

Judges.—The judicial department is an agency for the State, and the judges are public officers. State v. Stanley, 66 N. C. 60, 8 Am. Rep. 488 (1872).

A clerk of the court is a public officer. Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899).

A recorder is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910). See State v. Lord, 145 N. C. 479, 59 S. E. 656 (1907).

Federal District Attorney Acting as Solicitor.—The appointment by the judge of the United States district attorney to act temporarily for an absent solicitor in the prosecution of a criminal action in the State court, does not come within the inhibition of our Constitution, Art. XIV, § 7, as to holding two offices at the same time. State v. Wood, 175 N. C. 809, 95 S. E. 1050 (1918).

Legislative Members. — The legislative department is an agency for the State, and the members of the Senate and of the House of Representatives are public officers in the broad sense the term is used in the Constitution of the State. State v. Stanley, 66 N. C. 60 (1872).

In Worthy v. Barrett, 63 N. C. 199 (1869), it is said that "members of the legislature are not officers. Theirs are places of trust and profit, but not offices of trust and profit." Doyle v. Raleigh, 89 N. C. 133 (1883). In this instance the court was using the terms in the restricted sense in which they are used in the Fourteenth Amendment to the Constitution of the United States. State v. Stanley, 66 N. C. 60 (1872).

The members of the county board of education are public officers. Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898); Greene v. Owen, 125 N. C. 212, 34 S. E. 424 (1899).

State Printer. — Under the acts abolishing the office of State printer and providing for letting of State printing by contract, the position of State printer was not a public office. Brown v. Turner, 70 N. C. 93 (1874).

University Trustees and Directors of State Institutions. — The trustees of the University of North Carolina and the directors of the penitentiary, of the lunatic asylum and of the institution for the deaf, dumb and blind, are public officers. People v. McKee, 68 N. C. 429 (1873); People v. Bledsoe, 68 N. C. 457 (1873); People v. Johnson, 68 N. C. 471 (1873); People v. McGowan, 68 N. C. 520 (1873).

The office of the superintendent of the State prison, with its attendant duties, is a public office. State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899).

A constable is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

Chief Shellfish Inspector.—The office of chief inspector of the shellfish commission is a public office. White v. Hill, 125 N. C. 194, 34 S. E. 432 (1899).

A town clerk is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

Clerk of the Peace. — See Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

Parish Clerk.—See Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

Clerk of City Works. — It has even been held that a clerk of the city works is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

The office of brigadier general under the Confederate States was held to be incompatible with that of Adjutant General of the State of North Carolina, and the acceptance of the former office was held to vacate the latter which was held at the time of such acceptance. In the Matter of Martin, 60 N. C. 153 (1863), in the appendix. But it seems that it is now customary for the adjutant general of state to hold a commission as brigadier general from the federal government.—Ed. note.

The position of public administrator is a mere administrative agency, and not an office or place of trust, within the Const., Art. 14, § 7. State v. Smith, 145 N. C. 476, 59 S. E. 649 (1907).

Sexton.—It has even been held that a sexton is a public officer. Rhodes v. Love, 153 N. C. 468, 69 S. E. 436 (1910).

A night watchman acting under an appointment from the treasury department of the United States to guard and protect a post-office building from depredation and injury did not hold an office or place of trust and profit that disabled him from being a member of a board of aldermen. Doyle v. Raleigh, 89 N. C. 133 (1883).

The chief engineer of the Western North Carolina Railroad is not a public officer. Eliason v. Coleman, 86 N. C. 236 (1882).

Performance of Duties after End of Term.—Where the statute imposes certain duties to be performed by an officer after the expiration of the term of office, their performance does not constitute a place or office of trust or profit so as to disqualify the former officer from holding another office at the same time. State v. Somers, 96 N. C. 467, 2 S. E. 161 (1887).

§ **128-2. Holding office contrary to the Constitution; penalty.**—If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to the seventh section of the fourteenth article of the Constitution of the State, he shall forfeit and pay two hundred dollars to any person who will sue for the same. Provided, such action shall not be brought or maintained by any person who is not a bona fide resident of the same county in which the defendant resides. (1790, c. 319, P. R.;

1792, c. 366, P. R.; 1793, c. 393, P. R.; 1796, c. 450, P. R.; 1811, c. 811, P. R.; R. C., c. 77, s. 1; Code, s. 1870; Rev., s. 2365; C. S., s. 3201; Ex. Sess. 1924, c. 110.)

Cross Reference.—As to parties to suits for penalties, see § 1-58.

Editor's Note. — The 1924 amendment added the proviso.

§ **128-3. Bargains for office void.**—All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (5 and 6 Edw. VI, c. 16, s. 3; R. C., c. 77, s. 2; Code, s. 1871; Rev., s. 2366; C. S., s. 3202.)

Theory of Appointments. — By the theory of our government, appointments to office are presumed to be made solely upon the principle detur digniori, and any practice whereby the bare consideration of money is brought to bear in any form upon such appointments to or resignation of office conflicts with and degrades this great principle. The services performed under such appointments are paid for by salary or fees, presumed to be adjusted at the point of adequate remuneration only. Any premium paid to obtain office interferes with this adjustment and tempts to speculation, overcharges and frauds in the effort to restore the balance thus disturbed. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

The public has a right to some better test of the capacity of their servants than the fact that they possess the means of purchasing their offices. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

Agreements Void. — Public offices are public trusts, and should be conferred solely upon considerations of ability, integrity, fidelity and fitness for the position. Agreements for compensation to procure these tend directly and necessarily to lower the character of the appointments, to the great detriment of the public. Hence, such agreements, of whatever nature, have always been held void as being against public policy. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

Contracts to procure appointments to an office or to resign an office in another's favor are void at common law, as well as by statute. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

Same—Federal Offices.—Notwithstanding the office is under the United States government, if an action were brought in our courts to recover upon a bond or mortgage given for such consideration, our courts would hold it void. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

§ **128-4. Receiving compensation of subordinates for appointment or retention; removal.** — Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by §§ 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2.)

§ **128-5. Oath required before acting; penalty.**—Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (R. C., c. 77, s. 4; Code, s. 1873; Rev., s. 2367; C. S., s. 3203.)

Office May Exist without Taking of Oath.—The taking of the oath of office is not an indispensable criterion, for the office may exist without it. It is a mere incident, and constitutes no part of the office. State v. Stanley, 66 N. C. 60 (1872); State v. Patrick, 124 N. C. 651, 33 S. E. 151 (1899).

§ **128-6. Persons admitted to office deemed to hold lawfully.** — Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Const., art. 4, s. 25; 1844, c. 38, s. 2; 1848, c. 64, s. 1; R. C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C. S., s. 3204.)

This section applies to a person who, having duly qualified, is performing the duties of the office under color of right, and not to a case where the appointee of the Governor, requiring the concurrence of the Senate in order to hold his office for the full unexpired term of his predecessor, is holding over after the Senate has met and concurred in the appointment of another. State v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

To constitute an officer de facto it is requisite that there be some colorable election or appointment to and induction into the office. Van Amringe v. Taylor, 108 N. C. 196, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202 (1891), citing Burke v. Elliott, 26 N. C. 355 (1844); Gilliam v. Reddick, 26 N. C. 368 (1844), Commissioners v. McDaniel, 52 N. C. 107 (1859); Keeler v. New Bern, 61 N. C. 505 (1868); People v. Staton, 73 N. C. 546 (1875); State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

The indispensable basis of being a de facto officer is that there is such an office. State v. Shuford, 128 N. C. 588, 38 S. E. 808 (1901).

Persons who have been regarded as public officers for the greater part of the time during which the office existed, and whose acts are recognized by other public functionaries, must be taken to be officers de facto. Burton v. Patton, 47 N. C. 124, 62 Am. Dec. 194 (1854).

An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised (1) without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be; (2) under color of a known and valid appointment or election, but where the officer failed to conform to some precedent requirement or condition, such as taking an oath, giving a bond, or the like; (3) under color of a known election or appointment, void because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; (4) under color of an election or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such. State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890); State v. Taylor, 108 N. C. 196, 12 S. E. 1005 (1891). See State v. Speaks, 95 N. C. 689 (1886); Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976 (1914).

Acts of de facto officers, who exercise their office for a considerable length of time, are as effectual when they concern the rights of third persons or the public as if they were officers de jure, but to constitute one an officer de facto there must be an actual exercise of the office and acquiescence of the public authorities long enough to cause, in the mind of the citizen, a strong presumption that the officer was duly appointed. Hughes v. Long, 119 N. C. 52, 25 S. E. 743 (1896), citing Burke v. Elliott, 26 N. C. 355 (1844); Gilliam v. Reddick, 26 N. C. 368 (1844); State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

The acts of one purporting to be an officer are evidence of his authority; and such acts, as to third persons, are to be taken as valid while the incumbent is thus acting. Swindell v. Warden, 52 N. C. 575 (1860).

The official acts of persons entering into office under color of an irregular election are of full force until such officers are removed by a proper proceeding. Commissioners v. McDaniel, 52 N. C. 107 (1859).

Usurping, De Facto and De Jure Officers Distinguished.—A usurper is one who takes possession without any authority. His acts are utterly void, unless he continues to act for so long a time or under such circumstances as to afford a presumption of his right to act. And then his acts are valid as to the public and third persons. But he has no defense in a direct proceeding against himself. A de facto officer is one who goes in under color of authority or who exercises the duties of the office so long or under such circumstances as to raise a presumption of his right; in which cases his necessary official acts are valid as to the public and third persons; but he may be ousted by a direct proceeding. A de jure officer is one who is regularly and lawfully elected or appointed and inducted into office and exercises the duties as his right. All his necessary official acts are valid, and he cannot be ousted. The only difference between an officer de facto and an officer de jure is that the former may be ousted in a direct proceeding against him, while the latter cannot be. So far as the public and third persons are concerned, there is no difference whatever. The acts of one have precisely the same force and effect as the acts of the other. People v. Staton, 73 N. C. 546 (1875), citing Burke v. Elliott, 26 N. C. 355 (1844); Gilliam v. Reddick, 26 N. C. 368 (1844); Commissioners v. McDaniel, 52 N. C. 107 (1859); Swindell v. Warden, 52 N. C. 575 (1860); Keeler v. New Bern, 61 N. C. 505 (1868); Culver v. Eggers, 63 N. C. 630 (1869); Ellis v. N. C. Institution, 68 N. C. 423 (1873).

A mere intruder or usurper is not ordinarily, but may become, an officer de facto in some cases. This can happen only by the continued exercise of the office by him and the acquiescence therein by the public authorities and the public for such length of time as to afford to citizens generally a strong presumption that he had been duly appointed. But when without color of authority he simply assumes to act, to exercise authority as an officer, and the public know the fact, or reasonably ought to know that he is a usurper, his acts are absolutely void for all purposes. The mere fact that, apart from his usurpation, his supposed official acts were fair and honest could not impart to them validity and efficiency. Burke v. Elliott, 26 N. C. 355 (1844); State v. Staton, 73 N. C. 546 (1875); State v. Taylor, 108 N. C. 196, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202 (1891); Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976 (1914).

Appointment Biennially.—A proviso for an appointment to office "biennially" ex vi termini implies a two years' term of office. State v. Patrick, 124 N. C. 651, 33 S. E. 151 (1899).

Tabulation of Election Result by Clerk.—A tabulation of the result of an election by the clerk, in the manner required by law, is prima facie correct, and can only be questioned in a quo warranto proceeding. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822 (1898).

Injunction is not the proper method of trying title to an office and it will not lie at the suit of the incumbent of a public office to restrain a claimant of the office from claiming and exercising its powers and duties. Patterson v. Hubbs, 65 N. C. 119 (1871); Jones v. Commissioners, 77 N. C. 280 (1877).

The erroneous action of the county commissioners in declaring an office vacant because of an apparent tie vote, and ordering a new election, does not warrant the granting of an injunction to one of the candidates, since the title to the office can be inquired into by quo warranto even after such a new election. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822 (1898).

Injunction does not lie to restrain county commissioners from declaring a public office vacant because of an apparent tie vote, where it is an attempt, in effect, to try the title to the office by injunction, which is not permissible. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822 (1898).

Who May Bring Action to Try Right to Office.—An action to try the right of an incumbent to any public office may be brought by the Attorney General upon his own information, or upon the complaint of any private party. People v. Wilson, 72 N. C. 155 (1875); People v. Hilliard, 72 N. C. 169 (1875).

Right of Action.—Any person having a right to an office, can in his own name, bring an action for the purpose of testing his right as against one claiming adversely. Brown v. Turner, 70 N. C. 93 (1874).

Notwithstanding the maxim "De minimis non curat lex," a suit will be entertained to determine rights to an office paying only eight dollars a month in addition to board. Greene v. Owen, 125 N. C. 212, 34 S. E. 424 (1899).

Proceeding in Nature of Quo Warranto.—Title to a public office cannot be tried by motion, but must be determined by a proceeding in the nature of quo warranto. Sneed v. Bullock, 77 N. C. 282 (1877), citing Patterson v. Hubbs, 65 N. C. 119 (1871); Brown v. Turner, 70 N. C. 93 (1874).

Same—As to Necessity of Demand.—No demand is necessary before suing to try the right to an office. Shennonhouse v. Withers, 121 N. C. 376, 28 S. E. 522 (1897).

Same — Allegation of Citizenship in Complaint. — Where persons who have been elected and qualified as county commissioners bring an action against persons appointed by the judge of the district, under the provisions of ch. 135, Laws 1895, to try the defendants' title to office, the complaint must allege that the plaintiffs are citizens and taxpayers of the county. Houghtalling v. Taylor, 122 N. C. 141, 29 S. E. 101 (1898), citing Foard v. Hall, 111 N. C. 369, 16 S. E. 420 (1892); Hines v. Vann, 118 N. C. 3, 23 S. E. 932 (1896).

A relator in quo warranto proceedings to try title to office accepts the position that he has been displaced in the office, by the form of action in which he seeks to assert his rights, and may not therein avail himself of the position that under the section, he should have been ousted therefrom by a judicial sentence, under a proper proceeding, etc. State v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

Conduct Amounting to Surrender of Office. — Where a person had been elected clerk of the superior court, and at the proper time had tendered his bonds, which had been accepted by the court, and he was inducted into office, while the former clerk was present in court, cognizant of what was going on, and did not object thereto, but surrendered up the office and records to the new clerk and retired from the performance of the duties of the office for twelve months thereafter, it was held, in an action in the nature of quo warranto, that such conduct in the old clerk amounted to a surrender of his office to the court, and justified the reception and induction into office of the newly elected clerk. Williams v. Somers, 18 N. C. 61 (1834).

Estoppel to Deny Acceptance and Qualification.—A person who held himself out and who acted as an officer and who signed his name as such, and who in writing resigned the office, is estopped from denying that he accepted the office, and he vacated a prior office filled by him. Midgett v. Gray, 159 N. C. 443, 74 S. E. 1050 (1912), reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791 (1912).

A person who held himself out and who acted as an officer is estopped to deny his qualification when the acceptance of such office is relied on to vacate a prior office filled by him, and that he was not sworn on the Bible when he qualified for the second office is not available. Midgett v. Gray, 159 N. C. 443, 74 S. E. 1050 (1912), reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791 (1912). See State v. Cansler, 75 N. C. 442 (1876); State v. Long, 76 N. C. 254 (1877).

Cited in In re Wingler, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

§ **128-7. Officer to hold until successor qualified.**—All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (1848, c. 64, s. 2; R. C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C. S., s. 3205.)

Holding Over after Expiration of Term. —An officer elected by the people, holding over after his regular term on failure of his successor to qualify, holds over until the place is filled at the next general election, under Const., Art. 3, §§ 1, 13. People v. McIver, 68 N. C. 467 (1873).

Where an officer has been inducted into his office before the beginning of the term for which he was re-elected, one who is appointed to fill the vacancy, caused by his death before that term begins, holds only until the expiration of the first term. State v. Smith, 81 N. C. 304 (1879).

Term of Appointee of Judge.—In case of a vacancy in the office of the clerk of the superior court the appointee of the judge holds only until the next election at which members of the General Assembly are chosen. Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905).

Status of Officer Holding Over — De Jure.—Whether regarded as a part of an original term or a new and conditional one by virtue of the statute, the holders are regarded as officers de jure until their successors have been lawfully elected or appointed and have properly qualified. State v. Simpson, 175 N. C. 135, 95 S. E. 106 (1918).

Same—De Facto.—Where a clerk of the superior court held over in office until his successor qualified, he was at least clerk de facto; his acts cannot be collaterally impeached, and are valid as to third parties. Threadgill v. Carolina Cent. R. Co., 73 N. C. 178 (1875).

The mayor of a municipality was constituted a special court for the municipality by valid act (chap. 144, Private Laws of 1913). A duly elected and qualified mayor assumed the duties as judge of the special court under claim of authority. By chap. 1142, Session Laws of 1949, it was provided that said judge should be appointed by the commissioners of the town, and that he should hold no other office. The town commissioners failed to appoint a judge under the provisions of this act. It was held that a sentence imposed by the mayor acting as judge of the special court cannot be collaterally attacked in habeas corpus since he was at least a judge de facto if not de jure. In re Wingler, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

When Legislature Presumed to Acquiesce in Continuation in Office.—The General Assembly having failed to appoint or provide for the election of successors to the highway and sinking fund commissioners of Madison County, who were appointed for a four- or six-year term by ch. 341, Public-Local Laws of 1931, the General Assembly having power to terminate, their continuance in office, and the General Assembly having power to terminate, change or continue the appointments, it will not be held that it intended to create perpetuities or exclusive emoluments in violation of any of the provisions of Article I of the Constitution, and said commissioners continue to hold office with power to discharge the duties thereof. Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

Cited in Hedgpeth v. Allen, 220 N. C. 528, 17 S. E. (2d) 781 (1941); Hill v. Ponder, 221 N. C. 58, 19 S. E. (2d) 5 (1942).

§ **128-8. Officers and employees responsible for cash or property to be surety bonded.**—All officers, officials and employees of the State charged with responsibility for cash, securities and/or property shall be surety bonded in corporate sureties admitted to do business in the State in such sums as may be fixed by the Governonor and the Advisory Budget Commission. The premiums on such surety bonds will be paid by the State out of the appropriations to the respective departments and institutions and other agencies. (1929, c. 337, s. 5.)

§ **128-9. Peace officers employed by State to give bond.**—The State of North Carolina shall require every peace officer employed by the State, elected or appointed, to give a bond with good surety payable to the State of North Carolina, in a sum not less than one thousand dollars ($1,000.00) and not more than two thousand five hundred dollars ($2,500.00), conditioned as well for the faithful discharge of his or her duty as such peace officer as for his diligently endeavoring to faithfully collect and pay over all sums of money received. Said bond shall be duly approved and filed in the office of the Insurance Commissioner, and certified copies of the same by the Insurance Commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1937, c. 339, s. 1.)

Failure to Give Bond Does Not Affect Capacity to Execute Judicial Process. — The fact that law enforcement officers appointed by a board of alcoholic control have not given bond as required by this section does not affect their capacity to execute a search warrant or other judicial process, since the giving of bond is not a condition precedent to the authority of a public officer to perform his duties but is solely for the protection and indemnification of persons who may be damnified by his failure or neglect in the discharge of his duties. Hinson v. Britt, 232 N. C. 379, 61 S. E. (2d) 185 (1950).

Stated in Jordan v. Harris, 225 N. C. 763, 36 S. E. (2d) 270 (1945).

§ **128-10. Citizen to recover funds of county or town retained by delinquent official.**—When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within sixty days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars, of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as indemnity shall in no case exceed five hundred dollars. (1913, c. 80; C. S., s. 3206.)

Citizens and taxpayers of a county may maintain an action against the commissioners of the county and its defaulting sheriff to enforce collection of the amount of the default upon allegations that the county commissioners have corruptly refused to perform their duties in this respect. Weaver v. Hampton, 201 N. C. 798, 161 S. E. 480 (1931).

The section applies to money collected before the passage of the act, and a citizen and taxpayer on sufficient and proper averment of default on part of the county officials, has a right to maintain an action of this character without resort to the provisions of the statute. Waddill v. Masten, 172 N. C. 582, 585, 90 S. E. 694 (1916).

Resident Judge without Authority to Indemnify Plaintiffs. — In an action by taxpayers under this section to recover of county commissioners on account of public funds unlawfully expended, etc., plaintiffs disclaiming any right personally to participate in the recovery, it was held that after a recovery by plaintiffs and the entry of a consent judgment dismissing the appeals, wherein no mention was made of indemnifying plaintiffs for their services, the resident judge was without authority to entertain a petition of one of the original taxpayer plaintiffs for such reimbursement. Hill v. Stansbury, 224 N. C. 356, 30 S. E. (2d) 150 (1944).

Authority of Commissioners to Allow County Treasurer Additional Salary.—In a civil action by taxpayers against county commissioners and against the treasurer of the county to recover moneys paid to such treasurer in excess of his annual salary as fixed by law, where the evidence tended to show that the county treasurer's salary was fixed at $1,800 a year in 1927, and that in 1931, agreeable to the Machinery Act of that year (§ 105-271 et seq.), the commissioners designated the county treasurer to receive tax prepayments and for this extra service allowed him $1,200 per year additional, and again in 1939 allowed him $240 more per annum, both without legislative authority, judgment of nonsuit as to the commissioners was properly allowed under the express provisions of this section, there being no evidence of bad faith, etc., while such judgment as to the county treasurer was reversed. Hill v. Stansbury, 223 N. C. 193, 25 S. E. (2d) 604 (1943).

§ 128-11. Trust funds to be kept separate.—Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

Cited in Patterson v. Southern Ry. Co., 214 N. C. 38, 198 S. E. 364 (1938).

§ 128-12. Violations to be reported; misdemeanors.—It shall be the duty of the director of the Local Government Commission to report to the solicitor of the district any violation of § 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 60, s. 3; 1931, c. 77, s. 2.)

Cited in Patterson v. Southern Ry. Co., 214 N. C. 38, 198 S. E. 364 (1938).

§ 128-13. Local: Officers compensated from fees to render statement; penalty; proceeds to school fund.—Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation for services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: First, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars and ten dollars additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and apply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December twelfth, one thousand nine hundred and thirteen.

This section applies only to the counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess. 1913, c. 10; 1935, c. 390.)

Power of Legislature to Regulate Pay.—One who accepts a public office does so, with well defined exceptions as to certain constitutional offices, under the authority of the legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the legislature, and the same may be reduced during the term of the incumbent, or he may therein be compensated by a salary instead of on a fee basis. Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915).

Construction of Act Changing Pay from Salary to Fee Basis.—An act changing the pay of county officials from a salary to a fee basis, taking prospective effect from the expiration of the terms of the present incumbents, will be presumed to have a sensible and just intent, with knowledge of existing conditions and will not be construed as to apply to deprive the incumbent sheriff of the emoluments of his term by requiring that he deliver the tax lists to his successor. Commissioners v. Bain, 173 N. C. 377, 92 S. E. 176 (1917).

§ 128-14. Identification cards for field agents or deputies of State Departments.—Every field agent or deputy of the various State Departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Preference for veterans in employment.—Hereafter in all examinations of applicants for positions with this State or any of its departments or institutions, a preference rating of ten per cent shall be awarded to all the citizens of the State who served the State or the United States honorably in either the army, navy, marine corps, or nurses' corps in time of war.

All departments and institutions of the State, or their agencies, shall give preference to such unemployed veterans as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways, or any other employment under the supervision of the State or its departments, institutions, or agencies: Provided, that the provisions of this section shall apply to widows of such veterans and to the wife of any disabled veteran. (1939, c. 8.)

§ 128-15.1. Section 128-15 applicable to persons serving in present war.—All the provisions for preference rating and preference of employment to citizens who served the State or the United States honorably in either the army, navy, marine corps or nurses' corps in time of war and to the widows of such veterans and the wives of disabled veterans provided in § 128-15 are hereby specifically made applicable to men and women who have served, are now serving, or shall serve in any branch of the armed services, coast guard and coast guard reserve or the nurses' corps during the present war, and are honorably discharged from such service, and to the widows of such veterans and the wives of disabled veterans of the present war. (1943, c. 168; 1947, c. 412.)

Editor's Note. — The 1947 amendment made this section applicable to the coast guard and coast guard reserve.

Article 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.—Any city prosecuting attorney, any sheriff, police officer, or constable, shall be removed from office by the judge of the superior court upon charges made in writing, and hearing thereunder, for the following cause:

First. For willful or habitual neglect or refusal to perform the duties of his office.

Second. For willful misconduct or maladministration in office.

Third. For corruption.

Fourth. For extortion.

Fifth. Upon conviction of a felony.

Sixth. For intoxication, or upon conviction of being intoxicated. (P. L. 1913, c. 761, s. 20; 1919, c. 288; C. S., s. 3208.)

Cross References. — As to appropriate manner of action by which to try the title to an office, see § 1-515 and note. As to removal for receiving compensation of subordinates, see § 128-4. As to removal of sheriffs and police for laches in enforcing laws relating to intoxicating liquors, see § 18-24.

Purpose of Statute.— The officer may be removed for misconduct or failure to perform the duties of his office, whether such failures were willful or habitually negligent; the statute was evidently enacted for the protection of the public, and not for the punishment of the delinquent officer. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Failure to Take Oath Does Not Exempt from Liability. — There can be no doubt that if one elected to an office takes possession of it, and engages in the exercise of its duties, and misbehaves as in this case —takes unlawful and extortionate fees—he will be liable for such misbehavior, notwithstanding the fact that he failed to take oath of office. State v. Cansler, 75 N. C. 442 (1876).

Sufficiency of Evidence. — The evidence of a prosecuting attorney in proceedings before the judge to remove him from office under this section is sufficient to sustain an order removing him when he admits that he attempted to induce, and did induce, a person to violate the statutes of the State in participating in acts made an offense for immorality, etc., whatever his intent may have been therein. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920), wherein it was also held that defendant could not complain because he was removed not in accordance with the specifications alleged in the petition, but upon his own evidence.

Jury Not Required. — The proceedings under this section do not require an issue to be submitted to the jury. A public office is not a property right under the provisions of the Constitution of North Carolina, Art. 1, § 19. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Appeal from Superior Court.—An appeal from the judgment of the superior court judge that a prosecuting attorney be removed for "willful misconduct or maladministration in office," etc., is upon questions of law and legal inferences, if justified by the findings of facts supported by evidence. Constitution, Art. VI, § 8; and the appeal is allowed by § 1-277. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Enjoining Vacating of Office by Commissioners before They Have Qualified.— An action to enjoin newly-elected county commissioners, who had not yet qualified, from declaring a public office vacant, and electing a successor, is properly dismissed as premature. Cozart v. Fleming, 123 N. C. 547, 31 S. E. 822 (1898).

§ 128-17. Petition for removal; county attorney to prosecute.—The complaint or petition shall be entitled in the name of the State of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the solicitor of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or solicitor to appear and prosecute this proceeding. (P. L. 1913, c. 761, s. 21; 1919, c. 288; C. S., s. 3209.)

§ 128-18. Petition filed with clerk; what it shall contain; answer. —The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court his answer, which shall be verified. (P. L. 1913, c. 761, s. 22; 1919, c. 288; C. S., s. 3210.)

§ **128-19. Suspension pending hearing; how vacancy filled.**—Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vancancies in such office. (P. L. 1913, c. 761, s. 23; 1919, c. 288; C. S., s. 3211.)

§ **128-20. Precedence on calendar; costs.**—In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (P. L. 1913, c. 761, s. 24; 1919, c. 288; C. S., s. 3212.)

Article 3.

Retirement System for Counties, Cities and Towns.

§ **128-21. Definitions.**—The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this article.

(2) "Employer" shall mean any county or incorporated city or town, or the light and water board or commission of any incorporated city or town, or the board of alcoholic control of any county or incorporated city or town participating in the Retirement System. The North Carolina League of Municipalities, housing authorities created and operated under and by virtue of chapter 157 of the General Statutes, and the office of the Retirement System shall be classed as employers eligible to participate in the Retirement System.

(3) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subsection two of this section, including employees of any light and water board or commission, and full-time employees of any housing authority created and operating under and by virtue of chapter 157 of the General Statutes, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the board of trustees shall decide who is an employee.

(4) "Member" shall mean any person included in the membership of the Retirement System as provided in § 128-24.

(5) "Service" shall mean service as an employee as described in subsection three

of this section and paid for by the employer as described in subsection two of this section.

(6) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by § 128-26.

(7) "Membership service" shall mean service as an employee rendered while a member of the Retirement System.

(8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 128-26.

(9) "Board of trustees" shall mean the board provided for in § 128-28 to administer the Retirement System.

(10) "Medical board" shall mean the board of physicians provided for in § 128-28, subsection twelve.

(11) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in § 128-30, subsection one.

(12) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the board of trustees in accordance with § 128-29, subsection two.

(13) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.

(14) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.

(15) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.

(16) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this article.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(19) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.

(20) "Average final compensation" shall mean the average annual earnable compensation of an employee during his last five years of service, or if he had less than five years of service, then his average earnable compensation for his total service.

(21) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this article.

(22) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(23) "Fiscal year" shall mean any year commencing July first and ending June thirtieth next following. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015.)

Local Modification.—Session Laws 1945, c. 526, amending §§ 128-21, 128-22, 128-26 through 128-30 and 128-36, provides in § 9 that it shall not apply to the counties of Buncombe, Gates, Granville, Lee, New Hanover, Onslow, Randolph, Rutherford and Vance or to the cities of Henderson and Wilmington. Subsequently Session Laws 1945, cc. 1077, 1086, 1089, 1091 and 1100 made the above amendatory act applicable to Buncombe, Granville, Rutherford and Vance counties. Session Laws 1945, c. 1100, in effect makes chapter 526 applicable to Randolph County, though its title only purports to make it applicable to the city of Asheboro. Session Laws 1947, c. 15, s. 1, amended Session Laws 1945, c. 526, s. 9, by striking out the reference to the city of Henderson; and Session Laws 1947, c. 943, struck out Lee from the list of counties; and Session Laws 1951, c. 269, struck out Gates from the list of counties. Thus it appears that only the counties of New Hanover and Onslow, and the city of Wilmington, are excepted from the operation of Session Laws 1945, c. 526.

Editor's Note. — The 1941 amendment inserted the word "Local" in subsection (1) and made changes in subsection (6). The 1943 amendment also changed subsection (6). The 1945 amendment rewrote subsection (6) and the 1947 amendment inserted in subsections (2) and (3) the clauses relating to the light and water board or commission. The first 1949 amendment made subsection (2) applicable to housing authorities and subsection (3) applicable to employees of such housing authorities. The second 1949 amendment inserted in subsection (2) the following "or the board of alcoholic control of any county or incorporated city or town."

Session Laws 1947, c. 15, s. 2 made this article applicable to the city of Henderson. For act exempting from this article the uniformed employees of the fire department of the city of Charlotte, see Session Laws 1947, c. 926, amended by Session Laws 1949, c. 734, and Session Laws 1951, c. 387.

For acts relating to retirement systems for New Hanover County and the city of Wilmington, see Session Laws 1943, cc. 669, 708.

For comment on the 1939 enactment, see 17 N. C. Law Rev. 369. For comment on the 1941 amendment, see 19 N. C. Law Rev. 510.

Discretionary Power to Participate in Retirement System.—Where a city has become an employer participating in the State Retirement System under authority conferred by this article and by an act amending its charter, the repeal of the charter provision leaves its governing authorities with discretionary power to participate in the Retirement System under authority conferred by this article and mandamus will not lie to compel it to withdraw from the State Retirement System. Laughinghouse v. New Bern, 232 N. C. 596, 61 S. E. (2d) 802 (1950).

§ 128-22. Name and date of establishment. — A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. Following the filing of the application as provided in § 128-23(3), the board of trustees shall set a date not less than sixty and not more than ninety days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1941 amendment changed the former date in the first paragraph, and inserted the word "Local" in the second paragraph. The 1943 amendment also changed said date. Prior to the 1945 amendment the second sentence provided that the Retirement System was operative as of July 1, 1943.

§ 128-23. Acceptance by cities, towns and counties.—(1) The governing body of any incorporated city or town may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(2) The board of commissioners of any county may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the Retirement System, and the said county board of commissioners may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9 and in addition to the rates allowed by the Constitution.

(3) Any eligible employer desiring to participate in the Retirement System shall file with the board of trustees an application for participation under the conditions included in this article on a form approved by the board of trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this article, and to transmit such contributions to the board of trustees. It shall also agree to make the employer's contributions for the participation in the Retirement System of all employees entering the service of the employer, after its participation begins, who shall become members.

(4) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the Retirement System and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(5) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees, but such contributions payable during the period of temporary default shall be paid at such later time as may be mutually agreed upon by the employer and the board of trustees together with interest thereon at the rate of six per centum (6%) per annum. At such time as such defaulted contributions together with interest thereon shall be fully paid, such employer shall no longer be deemed in temporary default and shall be restored to good standing in the Retirement System.

Notwithstanding anything to the contrary, the Retirement System shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits.

(6) Effective July 1, 1951, there shall be two classes of employers, to be designated Class A and Class B, respectively. Each employer whose date of participation occurs on or after July 1, 1951 shall be a Class A employer. Each other employer shall also be a Class A employer: Provided, however, that such employer may, by written notice filed with the board of trustees on or before June 30, 1951, elect to be a Class B employer. (1939, c. 390, s. 3; 1951, c. 274, s. 1.)

Editor's Note. — The 1951 amendment added subsection (6).

§ **128-24. Membership.**—The membership of this Retirement System shall be composed as follows:

(1) All employees entering or re-entering the service of a participating county, city, or town after the date of participation in the retirement system of such county, city, or town, except that law enforcement officers, as defined in subsection (m) of § 143-166 of the General Statutes, may elect to become members of the Law Enforcement Officers' Benefit and Retirement Fund or the North Carolina Local Governmental Employees' Retirement System.

(2) All persons who are employees of a participating county, city, or town ex-

cept those who shall notify the board of trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county welfare and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation.

(3) Effective July 1, 1951, there shall be two classes of members, to be designated Class A and Class B, respectively. Each member who is an employee of a Class A employer shall be a Class A member, and each member who is an employee of a Class B employer shall be a Class B member. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2.)

Local Modification. — City of Charlotte: 1949, c. 990.

Editor's Note. — The 1941 amendment rewrote this section. The first 1949 amendment added the exception at the end of subsection (1). The second 1949 amendment rewrote the last proviso. And the 1951 amendment added subsection (3).

Who Excluded from Membership.—The exclusion from membership in the Retirement System, as expressed in paragraph (2), will not be interpreted to apply only to those receiving retirement allowances from general funds in the State treasury derived from general taxation, but is applicable to those entitled to benefits from any funds coming into the hands of the State Treasurer by virtue of a State law. Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Cited in Hunter v. Board of Trustees, 224 N. C. 359, 30 S. E. (2d) 384 (1944) (con. op.).

§ **128-25. Membership in system.**—Should sixty per centum (60%) of the members of any retirement, pension or annuity fund or system of any county, city or town of the State, hereafter referred to as a local pension system, elect to become members of the North Carolina Governmental Employees' Retirement System, by a petition duly signed by such members, the participation of such members in the Retirement System may be approved as provided in § 128-24 as though such local pension system were not in operation, and the provisions of this article shall also apply, except that the existing pensioners or annuitants of the local pension system who were being paid pensions on the date of the approval shall be continued and paid at their existing rates by the North Carolina Governmental Employees' Retirement System, and the liability on this account shall be included in the computation of the accrued liability by the actuary as provided by § 128-30, subsection three. Any cash and securities to the credit of the local pension system shall be transferred to the North Carolina Governmental Employees' Retirement System as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the North Carolina Governmental Employees' Retirement System. The balance of the funds transferred to the North Carolina Governmental Employees' Retirement System shall be offset against the accrued liability before determining the special accrued liability contribution to be paid by the county, city or town as provided by § 128-30, subsection three. The operation of the local pension system shall be discontinued as of the date of the approval. (1939, c. 390, s. 5; 1941, c. 357, s. 4.)

Editor's Note. — The 1941 amendment struck out the former first paragraphs of this section.

Cited in Dillon v. Wentz, 227 N. C. 117, 41 S. E. (2d) 202 (1947).

§ 128-26. Allowance for service.—(1) Under such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding the date of participation of his employer, and who becomes a member during the first year thereafter, shall file a detailed statement of all service as an employee rendered by him to his employer prior to such date of participation for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the board of trustees may use for the purpose of this article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection fourteen of § 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(4) Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of service rendered prior to the date of participation of his employer, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificates shall become void. Should the employee again become a member, such employee shall enter the System as an employee not entitled to prior service credit except as provided in § 128-27, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate.

(6) Effective July 1, 1951, there shall be two classes of prior service certificates, to be designated as Class A and Class B, respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate, and each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1941, 1943 and 1945 amendments made changes in subsections (1), (3) and (4). And the 1951 amendment added subsection (6).

§ 128-27. Benefits.—(1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at which time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, or if a uniformed policeman or fireman he shall have attained the age of fifty-five years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.

(c) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years; Provided, further that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Allowance for Service Retirement.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at the age of sixty years or at the actual age at retirement if prior thereto, computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years, or at the actual age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of five per centum (5%) of his compensation if such certificate is a Class A certificate, or at the rate of four per centum (4%) of his compensation if such certificate is a Class B certificate.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement, and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Re-Examination of Beneficiaries Retired on Account of Disability.— Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the contribution rate in effect for a Class A or Class B member, whichever is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under the provisions of this article, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees.

(7) Optional Allowance.—With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate: Provided, such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees.

(8) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the board of trustees may adopt, the provisions of chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1945 amendment made changes in paragraph (a) of subsection (1) and paragraphs (b) and (c) of subsection (2). The 1951 amendment added that part of paragraph (c) of subsection (2) beginning with the words "at the rate." The 1951 amendment also rewrote paragraph (b) of subsection (5) and added subsection (8).

§ **128-28. Administration.**—The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this article are hereby vested in the board of trustees: Provided, that all expenses in connection with the administration of the North Carolina Local Governmental Employees' Retirement System shall be charged against and paid from the expense fund as provided in subsection five of § 128-30.

(1) Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation.—The board of trustees shall be a body politic and corporate under the name Board of Trustees of the North Carolina Local Governmental Employees' Retirement System, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(2) Members of Board.—The board shall consist of the board of trustees of the Teachers' and State Employees' Retirement System and two other persons to be appointed by the Governor; one a full-time executive officer of a city or town participating in the Retirement System, and one a full-time officer of the governing body of a county participating in the Retirement System, these to be appointed for a term of two years each. At the expiration of these terms of office, the appointment shall be for a term of four years.

(3) Compensation of Trustees.—The trustees shall be paid seven dollars ($7.00) per day during sessions of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(4) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(5) Voting Rights.—Each trustee shall be entitled to one vote in the board.

Five affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(6) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this chapter.

(7) Officers and Other Employees, Salaries and Expenses.—The board of trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve.

(8) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(9) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

(10) Legal Adviser.—The Attorney General shall be the legal adviser of the board of trustees.

(11) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(12) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(13) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection fourteen, paragraphs (a) and (b), of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(14) In the year one thousand nine hundred and forty-five, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the board of trustees shall:

(a) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and

(b) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

(15) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1941 and 1945 amendments rewrote this section.

§ 128-29. Management of funds.—(1) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in § 128-30, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon domestic life insurance companies in the making and disposing of their investment; and subject to like terms, conditions, limitations and restrictions, said trustee shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(2) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum per annum with respect to all calculations and allowances on account of members' contributions and at the rate of three per centum per annum with respect to employers' contributions, with the right reserved to the board of trustees to set a different rate or rates from time to time.

(3) Custodian of Funds.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Cash Deposits for Meeting Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit in one or more banks or trust companies of the State of North Carolina, organized under the laws of the State of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company.

(5) Selection of Depostories.—The board of trustees shall select a bank or banks for the deposits of the funds and securities of the Retirement System in the same manner as such banks are selected by the Treasurer of the State of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the State. The funds and properties of the North Carolina Governmental Employees' Retirement System held in any bank of the State shall be safeguarded by a fidelity and surety bond, the amount to be determined by the board of trustees.

(6) Immunity of Funds.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1939, c. 390, s. 9; 1941, c. 357, s. 7; 1945, c. 526, s. 5.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1941 amendment substituted in subsection (3) the words "State Treasurer" for the words "secretary-treasurer of the board of trustees," and the word "secretary" for "secretary-treasurer." The 1945 amendment rewrote the last sentence of subsection (2).

§ **128-30. Method of financing.**—All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund and the expense fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payment from the annuity savings fund shall be made as follows:

(a) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member, and four per centum (4%) in the case of a Class B member. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty years and has completed thirty-five years of service. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. In determining the amount earnable by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer as to the amount of fees received by such member as compensation during the preceding year, and each month such member shall pay to his employer four per centum (4%) of one-twelfth of such compensation received from fees during the previous year, which shall be considered as deductions by the employer as provided in paragraphs (a) and (b) of subsection one of this section.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one-half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this article. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the earnable compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three per cent (3%) for general employees and five per cent (5%) for firemen and policemen, and the accrued liability contribution shall be three per cent (3%) for general employees and six per cent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four per cent (4%) for general employees and six and two-thirds per cent (6 2/3%) for firemen and policemen, and the accrued liability contribution shall be four per cent (4%) for general employees and eight per cent (8%) for firemen and policemen.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the prorata share of the cost of administration of the Retirement System. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately thirty years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the board of trustees as the result of actuarial valuations.

(d) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.

(e) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(f) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.

(g) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.

(h) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves of all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Expense Fund.—The expense fund shall be the fund from which the expenses of the administration of the Retirement System shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

(a) The board of trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.

(b) For the purpose of organizing the Retirement System and establishing an office, the board of trustees may provide as a prerequisite to participation in the Retirement System that each participating employer or employee or both shall pay an additional contribution to the Retirement System for the expense fund not to exceed two dollars for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the board of trustees shall determine, and/or the board of trustees may borrow such amounts as may be necessary to organize and establish the Retirement System.

(6) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.

(b) The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this article and shall transmit monthly, or at such time as the board of trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the board of trustees. The secretary-treasurer of the board of trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said board of trustees for use according to the provisions of this article.

(2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection three of this section. (1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1941 amendment added the last sentence to paragraph (a) of subsection (1). This amendment and the 1943 amendment made changes in paragraph (d) of subsection (3). The 1945 amendment made changes in paragraphs (a), (c) and (d) of subsection (3). The 1951 amendment rewrote the first sentence of paragraph (a) of subsection (1), made changes in the latter part of paragraph (a) of subsection (3) and added the last sentence of paragraph (d) of subsection (3).

§ **128-31. Exemptions from execution.** — The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this article, and the moneys in the various funds created by this article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically otherwise provided. (1939, c. 390, s. 11.)

§ **128-32. Protection against fraud.**—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment not exceeding twelve months, or both, such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had their records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1939, c. 390, s. 12.)

§ **128-33. Certain laws not applicable to members.**—No other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this article. (1939, c. 390, s. 13.)

§ **128-34. Transfer of members.** — Any member of the North Carolina Governmental Employees' Retirement System who leaves the service of his employer and enters the service of another employer participating in the North Carolina Governmental Employees' Retirement System shall maintain his status as a member of the Retirement System and shall be credited with all of the amounts previously credited to his account in any of the funds under this article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of his transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer. (1939, c. 390, s. 14.)

§ **128-35. Obligations of pension accumulation fund.**—The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of said obligations of the said fund. (1939, c. 390, s. 15.)

§ **128-36. Local laws unaffected; when benefits begin to accrue.**— Nothing in this article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of § 128-27, subsections one to four inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during that period. The provisions of this article shall apply only to those counties, cities or towns whose governing authorities voluntarily elect to be bound by same. (1939, c. 390, s. 16; 1941, c. 357, s. 9B; 1945, c. 526, s. 7A.)

Local Modification. — Gates, New Hanover, Onslow, and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note. — The 1945 amendment rewrote the last sentence.

§ **128-36.1. Participation of employees of regional library.**—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties operating a regional library may elect that employees of such library may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties operating said regional library. (1949, c. 923.)

§ **128-37. Membership of employees of district health departments.**—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department. (1949, c. 1012; 1951, c. 700.)

Editor's Note. — Former § 128-37, relating to the levy of taxes, etc., was repealed by Session Laws 1945, c. 526, s. 8, and the 1949 act inserted the present section as it appeared before the 1951 amendment.

The 1951 amendment inserted the words "or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health". It also substituted "health departments" for "district health department".

§ **128-38:** Repealed by Session Laws 1945, c. 526, s. 8.

Article 4.

Leaves of Absence.

§ **128-39. Leaves of absence for State officials.**—Any elective or appointive State official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the Governor, for such period as the Governor may designate. Such leave shall be obtained only upon application by the official and with the consent of the Governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of cumulative sick leave to which he may be entitled under rules and regulations adopted pursuant to § 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the Governor if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the Governor deems it necessary, the Governor may appoint any citizen of the State, without regard to residence or district, as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 1.)

Acceptance of Temporary Army or Navy Commission. — Under this section any State official may be given a leave of absence to accept a temporary officer's commission in the United States army or navy, as prescribed in this section, without perforce vacating his civil office and without violation of the provisions of N. C. Constitution, Art. XIV, § 7. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

Acceptance of Appointment Creating Vacancy. — Where a judge of a superior court has been granted leave of absence under provisions of this section, his acceptance of appointment as judge of United States Zonal Court in Germany would contravene the provisions of the Constitution, Art. XIV, § 7 and ipso facto create a vacancy in his office. In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

§ **128-40. Leaves of absence for county officials.**—Any elective or appointive county official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. Such leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any qualified citizen of the county as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 2.)

Cited in In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

§ **128-41. Leaves of absence for municipal officers.**—Any elective or appointive municipal official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. Such leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 3.)

Cited in In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

Chapter 129.

Public Buildings and Grounds.

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129-3. Powers and duties of Board.
129-4. Appointment and salary of Superintendent.
129-5. Bond of Superintendent.
129-6. Duties of Superintendent.
129-7. Board may make rules and regulations; violation a misdemeanor.
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Sec.
129-9. Disorderly conduct in and injury to public buildings and grounds.
129-10. Power of arrest.
129-11. Moore and Nash squares and other public lots.
129-12. Construction of public buildings; use of contingency and emergency fund.
129-13. Program for location and construction of future public buildings.

§ **129-1. Definitions.** — Public buildings and grounds referred to in this chapter include the Executive Mansion and all the public buildings and grounds owned or maintained by the State, now existing or hereafter acquired, in the city of Raleigh, and the State warehouse located on the State fair grounds, but do not include any buildings or grounds which any State institution or agency other than the Board of Public Buildings and Grounds is required by law to care for and maintain.

"Board" as used in this chapter means the Board of Public Buildings and Grounds.

"Superintendent" means the Superintendent of Public Buildings and Grounds. (1941, c. 224, s. 1.)

Editor's Note. — For comment on this enactment, see 19 N. C. Law Rev. 445.

§ **129-2. Board of Public Buildings and Grounds.**—The Governor, the Secretary of State, the Treasurer, the Attorney General and the Assistant Director of the Budget shall constitute the Board of Public Buildings and Grounds, and shall serve ex officio as members of the Board. (1941, c. 224, s. 2.)

§ **129-3. Powers and duties of Board.**—The Board shall have the following powers and duties in addition to other powers and duties provided by law:

(1) To assume the custody and control of public buildings and grounds, and supervise the care, operation and maintenance of public buildings and grounds, and the establishment, location, care and maintenance of walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers and tablets on public grounds.

(2) To provide necessary and adequate quarters, office and working space for all State departments, agencies and legislative committees in the city of Raleigh when no other provision for space is made by law, and to this end the Board is given full authority to allocate and reallocate space in public buildings and grounds and make such readjustments and provide such facilities as may be necessary to effectuate these powers.

(3) To employ, supervise and control such reliable and efficient assistants and laborers as may be necessary for the adequate care, operation and maintenance of the public buildings and grounds, and to fix their compensation with the approval of the Budget Bureau whenever such approval may be required by law.

(4) To provide necessary and adequate cleaning and janitor service, elevator operation service, and other operation or maintenance service.

(5) To provide necessary night watchmen.

(6) To procure and supervise the prompt repair of buildings, furniture and fixtures.

(7) To use at all times such means as may, in its opinion, be effectual to protect all public buildings and grounds from fire.

(8) To lease vacant lots of the State in the city of Raleigh not otherwise appropriated, upon such terms as may be reasonable and proper, for a period not to exceed twelve months under the terms of any one lease, and to collect the proceeds of such rentings and deposit them to the credit of the Treasurer immediately upon collection: Provided, however, any lease entered into pursuant to this subsection may, in the discretion of the Board, be extended or renewed from time to time, for a period not to exceed twelve months under the terms of any one extension or renewal.

(9) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly until the legislature convenes.

(10) To keep in repair, out of funds appropriated for that purpose, all necessary furniture for the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks and other employees of the General Assembly.

(11) To make and enforce regulations with respect to the parking of automobiles on all public grounds.

(12) In its discretion, to store, destroy or otherwise dispose of obsolete papers, records and documents which have been discarded by any of the State departments or agencies and found by them to be of no value.

(13) In its discretion, to establish and maintain a central mailing system for all State departments and agencies, and in connection therewith and in the discretion of the Board to make application for and procure a post-office substation for such purpose, and to do all other things needful in the discretion of the Board in connection with the establishment of such central mailing system. In the event of the establishment of such central mailing system the Board shall have the right to allocate and charge against the respective departments and agencies their proportionate part of the cost of maintenance of such central mailing system.

(14) In its discretion, to provide necessary and adequate messenger service for the State departments and agencies for whom the Board is required to furnish office or working space: Provided, that this shall not be construed to prevent the employment and control of messengers by any State department or agency when such messengers are compensated out of funds of said department or agency.

(15) To take or otherwise control birds and animals, such as pigeons, dogs, cats and squirrels, on public buildings and grounds.

(16) To beautify the public grounds.

(17) To provide necessary information service for visitors to the Capitol.

(18) To provide suitable space for an arsenal.

(19) To have direct control and supervision over the location, plan and construction of any public buildings unless it shall be otherwise provided in the act authorizing such construction.

(20) To direct and supervise the Superintendent in the administration of this chapter, and in the performance of all other powers and duties imposed by law. (1941, c. 224, s. 3.)

§ **129-4. Appointment and salary of Superintendent.**—The Board shall appoint and, with the approval of the Budget Bureau, fix the salary of the Superintendent. He shall hold office until his successor is appointed and files his bond in accordance with the provisions of § 129-5. (1941, c. 224, s. 4.)

§ **129-5. Bond of Superintendent.**—Before entering upon the duties of his office, the Superintendent shall execute a bond with good and sufficient surety or security, in a sum to be fixed by the Board, payable to the State of North Carolina and conditioned on the faithful discharge of his duties. The Board may, in its discretion, require that the penal sum of the bond be increased at any time. The bond shall be deposited in the office of the Secretary of State, and shall be renewed every two years, with such surety or security and in such amount as the Board may direct, and the same may be sued upon by the State upon the relation of the Board whenever in the judgment of said Board any condition thereof has been broken. The bond shall not be discharged until the whole penalty is exhausted in damages. (1941, c. 224, s. 5.)

§ **129-6. Duties of Superintendent.**—The Superintendent shall perform all the duties and exercise all the powers delegated to him by the Board with the approval and under the supervision of the Board. (1941, c. 224, s. 6.)

§ **129-7. Board may make rules and regulations; violation a misdemeanor.**—The Board is empowered to promulgate reasonable and necessary rules and regulations to provide for the care, conservation and protection of buildings and grounds and all fixtures and adjuncts thereto. A violation of any rule or regulation duly promulgated by the Board shall be a misdemeanor, and shall be punishable in the discretion of the court. (1941, c. 224, s. 7.)

§ **129-8. Accounts for labor.** — No account for labor performed or materials furnished in connection with the care, maintenance and operation of public buildings and grounds shall be audited and paid until the same is certified by the Superintendent to be accurate. (1941, c. 224, s. 8.)

§ **129-9. Disorderly conduct in and injury to public buildings and grounds.**—If any person shall commit any nuisance, or conduct himself in a disorderly manner in or around any public buildings and grounds, or deface or injure any of the buildings and grounds or willfully trespass upon any of the buildings and grounds or commit waste thereon, or refuse to surrender possession after the expiration of a lease, or if there is no lease, after the expiration of ten days from demand made by the Superintendent, such person shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1941, c. 224, s. 9.)

§ **129-10. Power of arrest.**—The Superintendent is hereby constituted a special peace officer, and shall have the right to arrest with warrant any person violating any law on or with respect to public buildings and grounds, and he shall have the right to arrest, or pursue and arrest, without warrant any person violating in his presence any law on or with respect to public buildings and grounds. The Superintendent is authorized to designate as special peace officers such number of reliable and efficient employees as he may think proper who shall have the same power of arrest as the Superintendent. Before the Superintendent shall exercise any power of arrest under this section he shall take an oath to be administered by the Attorney General; and before any officer designated by the Superintendent shall exercise any power of arrest under this section, he shall take an oath to be administered by the Superintendent. The oath shall be in the following form:

"I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of special peace officer for public buildings and grounds according to the best of my skill and ability, according to law; so help me, God." (1941, c. 224, s. 10.)

§ **129-11. Moore and Nash squares and other public lots.**—The governing body of the city of Raleigh shall have power, at its own expense, to grade, lay out in walks, plant with trees, shrubbery and flowers, and otherwise adorn Moore and Nash squares, and to that end shall have the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots belonging to the State within the city limits and not otherwise appropriated. The governing body shall not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Board, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the said Board shall call the matter to the attention of the governing body, and if the governing body then fails for a period of sixty days to begin to take proper care of the squares or lots, the Board may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots shall be needed by the State, the license of the city of Raleigh to control and manage them shall terminate six months after notice given by the Board to the governing body of the city, and thereupon possession shall be promptly surrendered to the State. (1941, c. 224, s. 11.)

§ 129-12. Construction of public buildings; use of contingency and emergency fund.—It shall be lawful to resort to the contingency and emergency fund, provided in the Appropriations Act, for financial aid in the construction, alteration, renovation or repair of State public buildings, when in the opinion of the Governor and the Council of State a condition of emergency exists rendering it necessary to construct, alter, renovate or repair one or more buildings for the purpose of housing State governmental bureaus, departments and agencies. (1941, c. 224, s. 12.)

§ 129-13. Program for location and construction of future public buildings.—The State Board of Buildings and Grounds is hereby authorized, empowered and directed to formulate a long range building policy program and shall co-operate with the governing board of the city of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the city of Raleigh desires to zone said property. If the State Board of Buildings and Grounds feels that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes it shall so advise the governing board of the city of Raleigh, and at such times as the governing body of the city of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the State Board of Buildings and Grounds as to whether the State Board of Buildings and Grounds finds a future need for such property for State building purposes. In the event that the governing board of the city of Raleigh is informed by the Board of Public Buildings and Grounds that any property herein covered be needed for building purposes by the State in the future, the governing body of the city of Raleigh shall give full consideration to such opinion of the Board of Buildings and Grounds before making any rezoning order. (1951, c. 1132.)

Chapter 130.

Public Health.

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SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

Article 1.

State Board of Health.

§ **130-1. Membership of Board.**—The North Carolina Board of Health shall consist of nine members, four of which members shall be elected by the Medical Society of the State of North Carolina and five of which members shall be appointed by the Governor. One of the members appointed by the Governor shall be a licensed pharmacist and one a reputable dairyman. (1879, c. 177, s. 1; Code, s. 2875; 1885, c. 237, s. 1; 1893, c. 214, s. 1; Rev., s. 4435; 1911, c. 62, s. 1; C. S., s. 7048; 1931, c. 177, s. 1; 1945, cc. 281, 1095.)

Editor's Note. — The 1945 amendments added the second sentence.

§ **130-2. Term of office; removal; vacancies; how filled.**—The terms of all members of the present Board of Health shall expire on April first, one thousand nine hundred thirty-one, or as soon thereafter as their successors have been appointed and elected in the manner provided for herein and shall have duly qualified. The Medical Society of the State of North Carolina shall at its next annual meeting elect two members to serve for two years and two members to serve for four years, and the Governor on or before May first, one thousand nine hundred thirty-one, shall appoint five members, three of such members to serve for two years and two of such members to serve for four years. At the expiration of the terms of the members so elected and appointed their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. The Medical Society of the State of North Carolina shall have the right to remove any member elected by it for cause, and the Governor shall have the right to remove any member appointed by him for cause. Vacancies on said Board among the membership elected by the Medical Society of the State of North Carolina shall be filled by the executive committee of said Medical Society until the next meeting of the said Medical Society, when the said Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Board among the membership appointed by the Governor shall be filled by the Governor for the unexpired term. (1879, c. 117, s. 3; Code, s. 2877; 1885, c. 237, s. 3; 1893, c. 214, c. 2; 1901, c. 245; Rev., s. 4436; 1911, c. 62, s. 2; C. S., s. 7049; 1931, c. 177, s. 2.)

Editor's Note. — The 1931 amendment rewrote this section.

§ **130-3. Duties of Board.**—The Board of Health shall take cognizance of the health interests of the people of the State; shall make sanitary investigations and inquiries in respect to the people, employing experts when necessary; shall investigate the causes of diseases dangerous to the public health, especially epidemics, the sources of mortality, the effect of location, employments, and conditions upon the public health. They shall gather such information upon these matters for distribution among the people, with the especial purpose of informing them about preventable diseases. They shall be the medical advisers of the State, and are herein specially provided, and shall advise the government in regard to the location, sanitary construction, and management of all State institutions, and shall direct the attention of the State to such sanitary matters as in their judgment affect the industries, prosperity, health, and lives of the people of the State. They shall make an inspection once in each year, and at such other times as they may be requested to do so by the State Board of Charities, of all public institutions, including all convict camps under the control of the State's Prison, and make a report as to their sanitary conditions, with suggestions and recommendations, to their respective boards of directors or trustees; and it shall be the duty of the officials in immediate charge of said institutions to furnish all facilities necessary for a thorough inspection. The secretary of the Board shall make biennially to the General Assembly, through the Governor, a report of their work. (1879, c. 117, s. 2; Code, s. 2876; 1885, c. 237, s. 2; 1893, c. 214, s. 3; Rev., s. 4437; 1911, c. 62, s. 3; C. S., s. 7050.)

Cross References. — As to duty to supervise sanitary and health conditions of prisoners, see § 148-10.

§ **130-4. May make regulations in epidemics.**—In times of epidemics of smallpox, yellow fever, typhoid fever, scarlet fever, diphtheria, typhus fever, bubonic plague, and cholera, the State Board of Health shall have sanitary jurisdiction in all cities and towns not having regularly organized local boards of health, and are hereby empowered to make all such regulations as they may deem necessary to protect the public health, and to enforce them by suitable penalties. (1893, c. 214, s. 17; Rev., s. 4438; 1911, c. 62, s. 4; C. S., s. 7051.)

Validity.—Regulations and provisions for the vaccination of the inhabitants, and their enforcement by penalties, constitute a valid exercise of governmental police power for the public welfare, health and safety. State v. Hay, 126 N. C. 999, 35 S. E. 459 (1900).

§ **130-5. To issue bulletins; to check diseases; compensation.**—Bulletins of the outbreak of disease dangerous to the public health shall be issued by the State Board whenever necessary, and such advice freely disseminated to prevent and check the invasion of disease into any part of the State. It shall also be the duty of the Board to inquire into any outbreak of disease, by personal visits or by any method the Board shall direct. The compensation of members on such duty shall be four dollars a day and all necessary traveling and hotel expenses. (1893, c. 214, s. 26; Rev., s. 4439; 1911, c. 62, s. 5; C. S., s. 7052.)

§ 130-6. Supervision of jails and camps by Board of Health.—The State Board of Health shall have the same supervision of all jails, county camps or other places of confinement of county or city prisoners in regard to the method of construction, sanitary or hygienic care as they have over the State Prison Department, and no jail, county camp, or other place of confinement of county or city prisons shall be construed or used as such for a period of six months, unless the State Board of Health shall have approved the same, and the violation of this section shall constitute a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1917, c. 286, s. 11½; C. S., s. 7713; 1925, c. 163.)

§ 130-7. Officers of Board; salary of secretary; pay of members.—The State Board of Health shall have a president, a secretary who shall also be treasurer, and an executive committee, said executive committee to have such powers and duties as may be assigned it by the Board of Health. The president shall be elected from the members of the Board and shall serve six years. The secretary-treasurer shall be a registered physician of the State and he shall be elected by the Board, subject to the approval of the Governor, and he shall serve for four years and until his successor has been elected and qualified. The Board shall have the right to remove the secretary-treasurer from office for cause. The executive committee shall be composed of the president of the Board, ex officio, and two other members of the Board to be elected from those composing it. The executive office of the Board shall be in the city of Raleigh, and the secretary shall reside there. The secretary shall be the executive officer of the Board and shall, under its direction, devote his entire time to public health work, and shall be known as the "State Health Officer." He shall receive for his services such yearly compensation as shall be fixed by the Board, not to exceed eight thousand dollars and his actual traveling and hotel expenses when engaged in the work of the Board. The said officer shall not receive any other compensation for the performance of his official duties than the salary herein stated. The Board may in its discretion elect as a special assistant to the State health officer, for the antituberculosis work, the secretary of the State Association for the Prevention of Tuberculosis, at an annual salary not to exceed six hundred dollars. The members of the Board shall receive no pay, except that each member shall receive four dollars and necessary traveling and hotel expenses when on actual duty in attending the meetings of the Board or of the executive committee or in pursuing special investigations in the State; but when attending important meetings beyond the limits of the State, the number of delegates thereto being limited to one in addition to the secretary, only actual traveling and hotel expenses shall be allowed. These sums shall be paid by the treasurer on authenticated requisition, approved and signed by the president. (1879, c. 117, ss. 5, 7; Code, ss. 2878, 2881; 1885, c. 237, s. 4; 1893, c. 214, s. 4; Rev., s. 4440; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2; C. S., s. 7053; 1921, c. 130; 1927, c. 143; 1931, c. 177, s. 3.)

Editor's Note — The 1921 amendment increased the salary of the secretary from three thousand to five thousand dollars per year, and inserted the provision against receiving any other compensation. The 1927 amendment increased the salary to eight thousand dollars per year. The 1931 amendment changed the term of the secretary-treasurer from six to four years, and added the provision as to his removal for cause.

§ 130-8. Meetings to elect officers.—The meeting of the State Board of Health for the election of officers shall be on the second day of the annual meeting of the Medical Society of the State of North Carolina in the year one thousand nine hundred and one and every six years thereafter. (1901, c. 245, s. 4; Rev., s. 4441; 1911, c. 62, s. 7; C. S., s. 7054.)

§ 130-9. Annual and special meetings.—Special meetings of the State Board of Health may be called by the president through the secretary. The regular annual meeting shall be held at the same time and place as the State Medical Society, at which time the secretary shall submit his annual report. The executive committee shall meet at such times as the president of the Board may deem necessary, and he shall call such meetings through the secretary. (1893, c. 214, s. 27; Rev., s. 4442; 1911, c. 62, s. 8; C. S., s. 7055.)

Article 2.

State Laboratory of Hygiene.

§ 130-10. Laboratory established under control of State Board of Health.—For the better protection of the public health and to prevent the spread of communicable diseases there shall be established a State Laboratory of Hygiene, the same to be under the control and management of the State Board of Health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7056.)

§ 130-11. To analyze potable waters.—It shall be the duty of the State Board of Health to have made in such laboratory monthly examinations of samples from all the public water supplies of the State; of all waters sold in bottle or other package, and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public. In the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation or entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown.

The Board shall also cause examinations to be made of well and spring waters, when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7057.)

§ 130-12. To make examinations for communicable diseases.—The Board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, of throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of fæces in cases of suspected hookworm diseases, and such other examinations as the public health may require. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7058.)

Effect upon Other Laws.—The provision in this section in regard to examination of sputum in cases of suspected tuberculosis is not repealed or affected by other laws for "extension work" throughout the State against tuberculosis, nor does it affect these other laws. See § 131-52 et seq. State Sanatorium v. Lacy, 173 N. C. 810, 92 S. E. 689 (1917).

§ 130-13. Support of laboratory; tax on waters.—For the support of the State Laboratory of Hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate, and private, selling water to the people. The annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells, the gross annual sales from which for the previous calendar year are less than two thousand dollars and more than one thousand five hundred dollars, fifty dollars; less than one thousand five hundred and more than one thousand dollars, forty dollars; less than one thousand and more than five hundred dollars, thirty dollars; less than five hundred and more than two hundred and fifty dollars, twenty dollars; less than two hundred and fifty dollars, fifteen dollars; for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the public, fifteen dollars, and an additional tax for water sold in bottle or other package from such spring in accordance with the above schedule. The tax shall be collected quarterly by the sheriff, as other taxes, and shall be paid by the sheriff directly to the treasurer of the State Board of Health.

It shall be the duty of the secretary of the State Board of Health when any person, firm or corporation is delinquent in the payment of taxes and penalties due the State Board of Health for a period of six months to notify the Attorney General of such delinquency, stating the amount then due by said person, firm or corporation for taxes and penalties. It shall be the duty of the Attorney General to immediately institute an action in the superior court of the county in which such delinquent person, firm or corporation for the collection of said delinquent taxes and penalties resides or is situated, and upon the final determination of said suit, the judgment rendered in favor of the State Board of Health shall be certified by the clerk of the superior court of the county to the county in which the delinquent taxpayer lives and/or conducts his business, and such judgment shall be a lien as like judgments and be enforced under the general law of the State: Provided, however, that when any delinquent taxpayer has entered into an agreement with the State Board of Health to pay up his delinquent taxes and penalties in installments and is paying them according to said agreement, that the secretary of the State Board of Health may or may not in his discretion notify the Attorney General to bring an action as provided in this section. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7059; 1935, c. 340.)

Editor's Note. — The second paragraph was added by the 1935 amendment.

§ 130-14. Duty of seller to make reports and transmit samples; penalties.—Every corporation, firm, or person selling water in the manner set forth in the preceding section shall file with the treasurer of the State Board of Health, annually in the month of January, an affidavit as to the gross amount received from sales of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to file such affidavit within the time prescribed shall subject the corporation, firm, or person to double tax for the current year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the Laboratory of Hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of twenty-five dollars. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the Laboratory of Hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring. (1911, c. 62, s. 36; C. S., s. 7060.)

§ 130-15. Nonresidents selling water.—Any person, firm, or corporation not a citizen of the State who shall sell or offer for sale any water in bottle or other package for consumption by the people of the State shall obtain a license from the treasurer of the State Board of Health and shall pay for said license the sum of sixty-four dollars per annum, or a less amount, equal to the tax paid by springs of the same class within the State, upon compliance with the conditions applying to them, payable in advance: Provided, that satisfactory evidence of purity furnished by the State hygienic laboratories of other states agreeing to reciprocate in the matter with this State shall be accepted in lieu of the license tax. (1911, c. 62, s. 36; C. S., s. 7061.)

§ 130-16. Publication of dangerous waters. — If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the State Laboratory of Hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the State

Board of Health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analysis the water shall be found to be no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the water for sale, and publication of the fact shall be made in the monthly bulletin: Provided, that this shall not apply to therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the Director of the State Laboratory of Hygiene. (1911, c. 62, s. 36; C. S., s. 7062.)

§ **130-17. Printing and stationery for laboratory.**—The printing and stationery necessary for the laboratory shall be furnished and paid for out of the appropriation to the State Board of Health. (1911, c. 62, s. 36; 1913, c. 181, s. 14; 1917, c. 220, s. 1; 1919, c. 145, s. 25; C. S., s. 7063.)

ARTICLE 3.

County Organization.

§ **130-18. County board of health; organization; terms of members; chairman.** — 1. All counties having a separate health department shall organize and operate a county board of health composed of three ex officio members, the same being the chairman of the board of county commissioners, mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county), and the county superintendent of public instruction; these ex officio members shall hold an annual election meeting the first week in January in each year for the purpose of electing or appointing public members; the public members shall be four in number, one of whom shall be a dentist, one a physician, one a registered pharmacist, and the other one shall be a public spirited citizen. Where either of the three specified public members, namely a physician, or a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, this place shall be filled with a public spirited citizen. The first meeting of the ex officio members for the election or appointment of public members shall be in the first week in January, one thousand nine hundred and forty-six, and at this meeting one of the public members shall be elected or appointed for a period of four years, one for three years, one for two years, and one for one year; thereafter one member shall be elected each year for a term of four years; in cases where more than one city or town participates by law in the financial support of the health department, the mayor of such participating city or town shall be an ex officio member of the board of health; in any instance the ex officio members shall elect the four public members as provided above; the board shall elect its own chairman, who shall not have the right to vote except in case of a tie; any four members of the board shall constitute a quorum and the county health officer shall act as secretary to such board of health; provided, that those counties which now have special city-county boards of health, as authorized by any private, local, or public-local act of the General Assembly, for the purpose of carrying on a joint health program shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State health officer, in writing, in which event the provisions of this paragraph shall apply.

(a) All vacancies in membership of the public members of a county board of health shall be filled by the county board of health at its next regular meeting following the creation of the vacancy. In case any public member appointed to fill a vacancy is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Provided that in the several counties of North Carolina wherein the public members of their respective county boards of health have not, prior to the effective date of this proviso, been appointed or elected for staggered terms as hereinbefore provided by this section, the ex officio members of all such county boards of health shall at a meeting to be called and held by the chairman of the board of county commissioners in each such county for such purpose, within 30 days from the effective date of this proviso, elect the public members of such county boards of health as follows: One of the public members of such board or boards of health shall be elected or appointed for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year; thereafter, one public member shall be elected during the month of January of each succeeding year for a term of four years, and the public members elected, appointed, or re-elected, or re-appointed pursuant to this proviso shall in all other respect be subject to all of the other provisions of article 3 of chapter 130 of the General Statutes. The present public members of any and all such county boards of health shall be eligible for re-election or re-appointment as members of such county board or boards of health for the terms provided herein.

2. The rules, regulations and ordinances of the county board of health shall apply to municipalities within the county but the board of health shall not have the power to pass special ordinances covering a municipality only, such authority being implicit in and retained by the governing body of the municipality. The duties and the responsibilities of the county board of health shall be as set forth in § 130-19 except as may be modified by the provision of this section. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7064; 1931, c. 149; 1941, c. 185; 1945, c. 99; 1945, c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92.)

Local Modification. — Caldwell: 1939, c. 366; Cumberland: 1935, c. 159; 1943, c. 91; Moore: 1943, c. 326, s. 2; Nash: 1941, c. 6, s. 1.

Editor's Note. — The 1931 amendment placed a dentist on the board, and the 1941 amendment added a provision relating to compensation. The 1945 amendments added a pharmacist to the board and rewrote the section. The 1947 amendment added paragraph (a) of subsection 1, and the 1951 amendment added the proviso at the end of the paragraph.

Constitutional. — This section is not repugnant to Article XIV, § 7, of the State Constitution, which forbids the holding of two offices by one man at the same time, but simply adds further duties to the offices already created, which expire with the term of office of each. McCullers v. Board, 158 N. C. 75, 73 S. E. 816 (1911).

Acts Not Upheld as Being Acts of De Facto Officers.—The acts of the Madison county board of health, created by ch. 322, Public-Local Laws of 1931, cannot be upheld on the ground that, notwithstanding the act is void, its members were de facto officers, since a de jure board of health for the county had been properly constituted under this section. Sams v. Board of Com'rs, 217 N. C. 284, 7 S. E. (2d) 540 (1940).

Cited in Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

§ 130-19. Duties of county board of health; meetings; expenses.—The county board of health shall have the immediate care and responsibility of the health interests of their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health. All expenditures shall be approved by the board of county commissioners before being paid. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7065.)

Limited Powers. — County boards of health and other administrative agencies, being creatures of statute, have only such powers as are conferred upon them by statute, either expressly or by necessary implication. Champion v. Vance County Board of Health, 221 N. C. 96, 19 S. E. (2d) 239 (1942).

This section gives no power to tax, nevertheless, it indicates that a county board of health is a subordinate governmental agency which of necessity must derive funds either from the State or county, or both, with which to pay salaries or other expenditures required in carrying on the health program of the State. Champion v. Vance County Board of Health, 221 N. C. 96, 19 S. E. (2d) 239 (1942).

Findings of Board Not Final.—The finding of the county board of health that the maintenance of a cemetery upon the watershed is a nuisance to the public health has not the same force as the positive declarations of statute, and it may be shown in answer to a notice to show cause why an injunction should not be continued to the final hearing that the particular cemetery, as maintained, was not a nuisance entitling the plaintiff to injunctive relief. Board of Health v. Lewis, 196 N. C. 641, 146 S. E. 592 (1929).

§ **130-20. Violation of rules of county board a misdemeanor.**—If any person shall violate the rules and regulations made by the county board of health he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1901, c. 245, s. 3; Rev., s. 3453; 1911, c. 62, s. 10; C. S., s. 7066.)

§ **130-21. To elect county physician and health officer.**—The county board of health shall elect a health officer meeting the qualifications set forth by the Merit System Council and subject to the provisions of chapter one hundred and twenty-six of the General Statutes. The term of office of the county health officer shall be at the pleasure of the county board of health. Emergency and temporary appointments may be made when necessary with the approval of the State health officer. When, in the case of a vacancy, the county board of health fails to elect a health officer within sixty days after receiving notification from the State health officer that a vacancy exists, it shall be the duty of the State health officer to appoint a health officer for the county. The county health officer may also be the county physician. Election of a county physician in counties having a county board of health shall be by such board. Such election shall take place during January of the odd years of the calendar for a two-year term. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and county physicians. The members of the county board of health while on duty shall receive a per diem of four dollars ($4.00). (1897, c. 201, s. 1; 1901, c. 245, s. 3; Rev., ss. 4444, 4446; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233; C. S., s. 7067; 1945, c. 1030, s. 3.)

Local Modification. — Nash: 1941, c. 6, s. 2; c. 193.

Editor's Note. — The 1945 amendment rewrote this section.

How Compensation of County Physician Fixed.—It is required that the board of county commissioners approve the expenditure for a county physician and pass upon its reasonableness, and upon their failure to do so mandamus will lie to compel them in good faith to pass upon it and in the exercise of a sound judgment say whether or not the compensation for the services as fixed are warranted by the statute. McCullers v. Board, 158 N. C. 75, 73 S. E. 816 (1911). But after a sum is fixed by them mandamus will not lie to compel payment of a greater sum. Halford v. Senter, 169 N. C. 546, 86 S. E. 525 (1915).

Validity of Appointment. — After the time expires in which the county board of health may appoint a county superintendent of health, one appointed by the Secretary of the State Board of Health takes the office, and one subsequently appointed by the county board of health has not a colorable title. McCullers v. Board, 158 N. C. 75, 73 S. E. 816 (1911).

Where a local law providing that the board of county commissioners should approve the health officer elected by the county board of health was void, the election of the health officer by the county board of health under this section was valid and effective without reference to any act by the county commissioners. Board of Health v. Board of Com'rs, 220 N. C. 140, 16 S. E. (2d) 677 (1941).

§ **130-22. Duties of county health officer; nonperformance a misdemeanor.**—The duties of the county health officer shall be to devote his entire time to the county public health work, and he shall perform the duties of county physician, the duties of quarantine officer, and the following additional duties: He shall make a sanitary examination during the summer months of every public school building and grounds in the county, and no school committee or teacher shall make use of any school building or grounds until the county superintendent of health shall certify in writing that said building and grounds have been inspected and found to be in a satisfactory sanitary condition within four months of the date of the certificate. He shall examine every school child that has previously been examined by the teacher according to methods furnished said teacher by the county superintendent of schools, and reported to said county superintendent of schools as probably defective in the condition of its eyes, ears, nose, or throat, and he shall further endeavor to have examined the feces of every child whom he suspects of having hookworm disease. He shall notify on blank forms and in accordance with instructions, furnished by the State Department of Public Instruction, every parent or guardian of a child having any defect of the aforesaid organs, or hookworm disease, and he shall suggest to said parent or guardian the proper course of treatment and urge that such treatment be procured. He shall co-operate fully with the county board of education, the county superintendent of schools, and the teachers in the public schools, to the end that children may be better informed in regard to the importance of health and the methods of preventing disease. He shall, through the county press, public addresses, and in every available way, endeavor to educate the people of his county to set a higher value on health, and to adopt such public and private measures as will tend to a greater conservation of life. Any violation of this section shall constitute a misdemeanor, and shall subject the defendant to a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S., s. 7068.)

§ **130-23. Duties of county physician; may employ another physician.**—The duties of the county physician shall be to make the medicolegal post-mortem examinations for the coroners' inquests, to make examination of lunatics for commitment, to render professional service to sick inmates of the convict camp, jail, and county home, upon request of the superintendent or keeper of these institutions, and to determine the nature of any particular disease, upon the request of the quarantine or deputy quarantine officer. The county physician shall have the right to employ any other regularly registered physician of his county, to perform any or all of the duties pertaining to the jail, county home, or convict camp, when in his judgment it is desirable to do so; but the terms under which such physician is employed by the county physician shall be approved by the board of county commissioners. (1901, c. 245, s. 3; Rev., s. 4445; 1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S., s. 7069.)

Right to Delegate Duties. — A county superintendent of health has no right to delegate the performance of his official duties to others, so as to give his employees the right to make their services a county charge. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

Same — Care of Smallpox Patient. — Under Laws 1893, ch. 214, § 9, providing that contagious diseases shall be promptly quarantined by the county superintendent of health, the services rendered by a person in removing a person afflicted with smallpox to a pesthouse, taking his meals to him and attending to him continually during his sickness, is a legitimate county charge, where the patient is insolvent and the services were rendered by the direction of the superintendent of health. Copple v. Commissioners, 138 N. C. 127, 50 S. E. 574 (1905).

§ **130-24. County quarantine officer.**—The election, term of office, and compensation of county quarantine officer are regulated as provided in article 14 of this chapter, entitled Infectious Diseases Generally. The county physician, county health officer, municipal physician, or municipal health officer shall be elegible to the position of quarantine officer. The county board of health shall arrange with the quarantine officer to accept and discharge the duties assigned in this chapter to him and any other duties relating to the control of infectious diseases which may be assigned to him by the county board of health.

The quarantine officer is charged with the enforcement of article 14 of this chapter, entitled Infectious Diseases Generally, and nothing herein contained shall interfere with the performance of his duties under that article. He shall faithfully enforce all laws pertaining to inland quarantine and disinfection and the rules and regulations governing these matters as prescribed by the local, county, or municipal boards of health, but any child or other person may remain in the custody and care of parents or family.

The quarantine of ports shall not be interfered with, but the officers of the local State boards shall render all aid in their power to quarantine officers in the discharge of their duties.

The failure of the quarantine officer to perform the duties imposed in this section shall be a misdemeanor, and he shall be punished for each offense, except as otherwise specifically provided, by a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, ss. 16, 20; C. S., s. 7070.)

§ **130-25. Abatement of nuisances.**—Whenever and wherever a nuisance shall exist which in the opinion of the county physician or county health officer is dangerous to the public health, it shall be his duty to notify in writing the parties responsible for its continuance, of the character of the nuisance and the means of abating it. Upon this notification, the parties shall proceed to abate the nuisance: Provided, however, that if the party notified shall make oath or affirmation before a justice of the peace of his or her inability to carry out the directions of the county physician or county health officer, it shall be done at the expense of the town, city, or county in which the offender lives. In the latter case the limit of the expense chargeable to the city, town, or county shall not be more than one thousand dollars in any case: Provided further, that nothing in this section shall be construed to give the county physician or county health officer the power to destroy or injure property without a due process of law as now exists for the abatement of nuisances. (1893, c. 214, s. 22; Rev., s. 4450; 1911, c. 62, s. 12; 1913, c. 181, s. 3; C. S., s. 7071.)

Sufficient Evidence of a Nuisance. — Evidence that a stable is within four feet of a dwelling house, and because of its filthy condition those occupying the house were unable to eat, and the health officer has given notice to abate the nuisance, is sufficient to convict under this section, and sufficient to sustain a fine under § 130-26. State v. Wilkes, 170 N. C. 735, 87 S. E. 48 (1915).

Power to Burn Dwellings. — Neither town nor county commissioners have authority under this section to burn a residence house to prevent the spread of contagious and infectious diseases. But in case they exceed their authority and burn a house no action will lie against them, in their official capacity, their liability, if any, is personal. Prichard v. Board, 126 N. C. 908, 36 S. E. 353 (1900). This is a specific application of the general rule that a municipality is not liable for the torts committed by its agents or officers.

§ **130-26. Failure to abate nuisance after notice misdemeanor.**—If any person, firm, corporation, or municipality responsible for the existence and continuance of a nuisance, after being duly notified in writing by the county physician or county health officer to abate said nuisance, shall fail to abate the same for twenty-four hours after such notice prescribed, he shall be guilty of a misdemeanor, and shall be fined two dollars a day as long as said nuisance remains. (1893, c. 214, s. 22; Rev., s. 3446; 1911, c. 62, s. 13; 1913, c. 181, s. 3; C. S., s. 7072.)

§ **130-27. Certain nuisances in seaport towns.**—All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water; all dead and putrefied animals lying about docks, streets, lanes, alleys, vacant lots, or yards; all privies that have no wells sunk under them; all slaughterhouses, all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of the State, are declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated, and removed. (1815, c. 893, s. 1, P. R.; R. C., c. 94, s. 15; Code, s. 2907; Rev., s. 4462; C. S., s. 7073.)

§ 130-28. Duty of owners of sunken lots in seaport towns; penalty.—Every person possessed of a lot in any seaport town, which from its low or sunken situation is liable to retain tide or rain water, or in which cellars or foundations for buildings may be dug (whether a tenement be erected over the same or not), shall during the months of June, July, August, September, and October, preserve and keep the said lot, cellars, and foundations dry and free from stagnant or putrid water and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town for every week he shall suffer such stagnant or putrid water or other filth to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioner of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended. (1815, c. 893, s. 2, P. R.; R. C., c. 94, s. 16; Code, s. 2908; Rev., s. 4461; C. S., s. 7074.)

§ 130-29. County commissioners may levy special tax to protect health.—The board of county commissioners of each county is hereby authorized at any time to levy a special tax, to be expended under the direction of a committee composed of the chairman of the board of county commissioners and the county health officer or county physician for the preservation of the public health. (Rev., s. 4455; C. S., s. 7075.)

Establishing Public Hospitals. — This section should be construed in connection with the sections of chapter 131, as to the maintenance of permanent public hospitals, and requires that the question of establishing such hospitals shall have the approval of the voters of the county in accordance with the methods and in the manner specified by the statute. Armstrong v. Board, 185 N. C. 405, 117 S. E. 388 (1923).

Maintenance of Public Welfare Departments.—No authority is given by this section to levy a special tax for the purpose of raising revenue for the maintenance of the public welfare departments. Atlantic Coast Line R. Co. v. Lenoir County, 200 N. C. 494, 157 S. E. 610 (1931).

Article 4.

Joint Health Departments.

§ 130-30. Appropriations for joint city and county health departments.—The governing authorities of all cities, towns and counties of North Carolina shall have the power and authority to appropriate annually and from time to time public moneys for the maintenance and operation of boards of health which have heretofore been created and are existing as joint city and county boards of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such joint county and city health department, and to levy special taxes therefor, for which the special approval of the General Assembly is hereby given. (1941, c. 296.)

Article 5.

Municipal Organization.

§ 130-31. Municipal physician or health officer; municipal regulations.—The authorities of any city or town, not already authorized in its charter, are hereby authorized to elect a municipal physician or municipal health officer when in their judgment municipal health would be improved thereby, and to make such regulations, pay such fees and salaries, and impose such penalties as in their judgment may be necessary for the protection and the advancement of the public health. (1893, c. 214, s. 25; Rev., s. 4454; 1911, c. 62, s. 14; 1913, c. 181, s. 4; C. S., s. 7076.)

§ 130-32. Duties of the municipal physician or health officer; enforcement.—The duties of the municipal physician within the jurisdiction of the town or city for which he is elected shall be identical with those of the county physician for the county, with the exception of the duties of the county physician pertaining to the jail, convict camp, and county home. The authorities of any city or town shall have the power to assign the duties of quarantine officers to the municipal physician or health officer, and in such cases the municipal health officer shall faithfully perform the duties of the quarantine officers as prescribed in this chapter, and shall be subject to the penalties provided for the refusal or nonperformance of such duties. If the physician is employed to devote his entire time to the public health interests of his town or city, he shall be known as the municipal health officer, and shall discharge all duties pertaining to the public schools of his town or city which were assigned in this chapter to the county health officer, and such other duties as may be assigned him by the municipal board of health.

Anyone violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than ten dollars nor more than fifty dollars. (1893, c. 214, s. 9; Rev., s. 4509; 1911, c. 62, s. 15; 1913, c. 181, s. 5; C. S., s. 7077.)

Cited in Board v. Henderson, 163 N. C. 114, 79 S. E. 442 (1913).

Article 6.

Sanitary Districts in General.

§ 130-33. Creation by State Board of Health.—For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation. (1927, c. 100, s. 1.)

Local Modification.—Caswell: 1939, c. 3, ss. 1, 2; 1941, c. 89; 1943, c. 287; Moore: 1939, c. 3, s. 3.

Article Valid.—This article constitutes a general law of State-wide application relating to health, and is valid. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530 (1928).

Cited in Halifax Paper Co. v. Roanoke Rapids Sanitary Dist., 232 N. C. 421, 61 S. E. (2d) 378 (1950).

§ 130-34. Incorporation; petition from freeholders.—Such sanitary district shall be incorporated as hereinafter set out. Fifty-one per cent or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which all or the major portion of the proposed district is located setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, if the same is approved by them, shall, through its chairman, transmit the petition to the State Board of Health requesting that the proposed sanitary district be created. Provided, however, that the board of county commissioners before passing upon said petition shall hold a public hearing upon the same and shall give prior notice of such hearing by advertising to be made by posting a notice at the courthouse door of their county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then in either of such events a like publication of notice shall be made and given in each of said counties. (1927, c. 100, ss. 2, 3.)

Withdrawal of Names from Petition. — Signers of a petition for the creation of a sanitary district under this article are entitled as a matter of right to withdraw their names from the petition at any time before action is taken on the petition by the county commissioners on the question of approval, and when their withdrawal reduces the number of signers to less than 51% of the resident freeholders within the proposed district the board of county commissioners is without jurisdiction and its approval of the petition may be enjoined. Idol v. Hanes, 219 N. C. 723, 14 S. E. (2d) 801 (1941).

§ **130-35. State Board of Health to hold public hearing.**—The State Board of Health or the secretary and State health officer shall name a time and place within the proposed district at which the State Board of Health, through a representative, shall hold a public hearing concerning the creation of the proposed sanitary district. The State Board of Health or the secretary and State health officer shall cause at least twenty days' notice to be given of the time and place of such hearing by publishing this information at least five times in a newspaper or newspapers published in or near the proposed district and having a general circulation therein. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place named by the representative of the State Board of Health. (1927, c. 100, s. 4; 1951, c. 178, s. 1.)

Editor's Note. — The 1951 amendment inserted the words "or the Secretary and State Health Officer" in the first and second sentences.

§ **130-36. Declaration that district exists; status of industrial villages within boundaries of district.**—If, after such hearing the State Board of Health shall deem it advisable to comply with the request of said petition and that a district for the purpose or purposes therein stated should be created and established, the State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a sanitary district; provided, however, that any industrial plant and its contiguous village shall be included within or excluded from the area embraced within such sanitary district as expressed in the application of the person, persons or corporation owning or controlling such industrial plant and its contiguous village, said application to be filed with the State Board of Health on or before the date of the public hearing as hereinbefore provided. Each district when created shall be identified by a name or number assigned by the State Board of Health. (1927, c. 100, s. 5.)

Validity. — The validity of this article is not affected by the provision that certain industrial enterprises and villages situate therein may be excluded upon application of the owners. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530 (1928).

§ **130-37. Election and terms of office of sanitary district boards.**—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, freeholders within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners candidates for said district board shall be elected in the primary and elected at said general election as are county officers except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates to be elected in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election: Provided that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify. (1927, c. 100, s. 6; 1943, c. 602.)

Editor's Note. — The 1943 amendment inserted the second paragraph.

§ **130-38. Vacancy appointments to district boards.**—Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled by the county commissioners of the county in which said sanitary district may be situate. (1935, c. 357, s. 2.)

§ **130-39. Corporate powers.**—When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

1. Under the supervision of the State Board of Health to acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant or such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district.

2. To issue certificates of indebtedness against the district in the manner hereinafter provided.

3. To issue bonds of the district in the manner hereinafter provided.

4. To cause taxes to be levied and collected upon all the taxable property within the district sufficient to meet the obligations of the district evidenced by bonds, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.

5. To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within and/or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

6. To employ such engineers, counsel and other such persons as may be necessary to carry into effect any projects undertaken and to fix compensation thereof.

7. To negotiate and enter into agreement with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.

8. To formulate rules and regulations necessary for proper functioning of the works of the district.

9. (a) To contract with any person, firm, corporation, city, town, village or political subdivision of the State both within and/or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the State in consideration of said person, firm, corporation, city, town, village or political subdivision permitting

the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district, when in the opinion of the sanitary district board it will be for the best interest of the district and subject to the approval of the State Board of Health.

(b) To contract with any person, firm, corporation, city, town, village or political subdivision of the State within and/or without the corporate limits of the district to supply raw and/or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the State where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.

10. After adoption of a plan as provided in § 130-44, the sanitary district board may, in its discretion, alter or modify such plan if, in the opinion of the State Board of Health, such alteration or modification does not constitute a material deviation from the objective of such plan. Such alteration or modification may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the State either within and/or without the corporate limits of the district instead of a sewage disposal line and other improvements, where such alteration or modification would permit the disposal of sewage at a point nearer the district either within and/or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the State to whom the water is to be supplied and would effect a saving to the district, and the sanitary district board may appropriate or reappropriate money of the district for carrying out such plan as altered or modified.

11. Subject to the approval of the State Board of Health, to engage in and undertake the prevention and eradication of malaria within the district by the eradication of the mosquito and to that end the sanitary district board of said sanitary district is hereby empowered to employ sufficient employees suitable to the accomplishment of this work.

12. To collect and dispose of garbage, waste, and other refuse by contract or otherwise.

13. To establish a fire department for the protection of property within the district, or to contract with cities, counties or other governmental units to furnish fire-fighting apparatus and personnel for use in the district.

14. The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection.

15. To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, all as provided in this article.

16. To establish a capital reserve fund for the district in accordance with the following provisions:

(a) The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district and/or from service charges and rates applied by the district board in accordance with law and/or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the Local Government Commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as "........... District, Capital Reserve Fund."

(b) Upon adoption of a resolution by the district board providing therefor and with the approval of the Local Government Commission, the capital reserve fund may be increased at any time with money from like source or sources as those stated in establishing resolution.

(c) Withdrawal from the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made (1) in anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal and/or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and (2) for investment or reinvestment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the State of North Carolina, in bonds of the district, or in bonds of any city, town or county in North Carolina. Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the Local Government Commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the Commission shall be endorsed by the secretary of the Commission or by an assistant designated by him for that purpose: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater.

(d) All moneys stated in the establishing resolution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the Local Government Commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the Local Government Commission.

17. To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:

(a) To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either, or both, the water or sewage systems of the district. The subsection shall be inapplicable unless the health of the people residing within the district is endangered or jeopardized by the failure to connect to either, or both, of said water or sewage systems.

(b) To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations.

(c) To require any person, firm or corporation to abate any nuisance detrimental or injurious to the public health of the district.

(d) To abolish, regulate and control the use and occupancy of all pig sties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet be within the corporate limits of some city or town.

(e) Upon the noncompliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the district sanitary board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have at least thirty days from the service of such notice in which to comply with such rule and regulation. The sanitary district board is authorized to grant, in its discretion, additional time for compliance.

(f) Upon failure to comply with such rule and regulation within thirty days as directed in said notice or within the time extended by the sanitary district board, such person, firm or corporation shall be guilty of a misdemeanor and fined and imprisoned in the discretion of the court.

(g) The sanitary district board is authorized to enforce the rules and regulations enacted or promulgated hereunder by criminal action or civil action, including injunctive relief.

18. For the purpose of promoting the public health, safety, morals, and the general welfare of the State, the sanitary district boards of the various sanitary districts of the State are hereby empowered, within the areas of said districts and not under the control of the United States or the State of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:

(a) No sanitary district board, under the provisions of this subsection, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two-thirds (2/3) of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two-thirds (2/3) of the owners of the real property in said area as shown by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after twenty days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for twenty days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.

(b) When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under article 14, chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.

(c) The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to co-operate fully with each other.

(d) The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subsection, and are authorized to enforce its rules and regulations in order to give effect to this subsection, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.

(e) None of the provisions of chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to § 160-173), shall apply to any sanitary district.

(f) This subsection shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; 1949, cc. 1133, 1145; 1951, c. 17, s. 1; 1951, c. 1035, s. 1.)

Local Modification. — Caswell: 1939, c. 3; 1941, c. 89; 1943, c. 287; 1945, c. 20; Moore: 1939, c. 3; Rockingham: 1947, cc. 565, 849.

Editor's Note. — The 1933 amendment rewrote subsection 5, and added subsections 9 and 10. The 1935 amendment changed subsection 4 and added subsection 11. The 1941 amendment which added subsections 12, 13, 14 and 15, also added a paragraph providing that said subsections "shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more."

The 1945 amendment added subsection 16, and the 1947 amendment struck out the restrictive paragraph added by the 1941 amendment. The first 1949 amendment rewrote subsection 10 and the other 1949 amendments added subsections 17 and 18. The first 1951 amendment made the same changes as the first 1949 amendment, which had not been constitutionally adopted. The second 1951 amendment rewrote subdivision (a) of subsection 17.

For comment on the fire protection provisions of the 1941 amendment, see 19 N. C. Law Rev. 498.

Services and Rates Not Subject to Control of Utilities Commission.—A sanitary district which, as a part of its functions, furnishes drinking water to the public and also filtered water for industrial consumers is a quasi-municipal corporation, and is not under the control and supervision of the North Carolina Utilities Commission as to services or rates. Halifax Paper Co. v. Roanoke Rapids Sanitary Dist., 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Lease of Filter Plant.—Defendant sanitary district was unable to raise funds for the construction of a filter plant and, in order to carry out the purposes for which it was created, leased a cotton mill's filter plant under an agreement that the mill should get its water at cost of filtering and should have priority over other industrial consumers. It was held that the lease contract was in the public interest and the district had authority to execute it, and the contract was valid since it did not impair the ability of the district to discharge its duties to the public nor unlawfully discriminate between commercial customers similarly circumstanced. Halifax Paper Co. v. Roanoke Rapids Sanitary Dist., 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Under the facts of the preceding paragraph, the district agreed with plaintiff paper mill to furnish it water from the surplus remaining after the needs of the district and lessor enterprise had been satisfied. It was held that upon increased demand by the lessor, resulting in a diminution of the surplus available for sale to other industrial consumers, the district had the power to reduce the amount of water furnished the paper mill proportionately, since the paper mill had no right to any water except out of surplus water remaining after the requirements of the district and the lessor enterprise had been satisfied, and since there was no discrimination in service to commercial users similarly circumstanced in regard to such surplus. Halifax Paper Co. v. Roanoke Rapids Sanitary Dist., 232 N. C. 421, 61 S. E. (2d) 378 (1950).

§ 130-40. Organization of board. — Upon election a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation of five dollars when actually engaged in the business of the district payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistance as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8.)

§ **130-41. Power to condemn property.**—When, in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of chapter 40 entitled "Eminent Domain" shall apply. Section 40-10 shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3.)

Editor's Note. — The 1933 amendment inserted the clause "within and/or without the corporate limits of the city" at two places in this section.

§ **130-42. Construction of systems by corporations or individuals.**—Whenever a corporation or the residents of any locality within the sanitary district shall desire a water supply, sewage system or any part thereof and the sanitary district board shall deem it inadvisable or impracticable at that time, due to remoteness from its general system or other cause, for the sanitary district to build such system, such corporation or residents may nevertheless build and operate such system at its or their own expense but it shall be constructed and operated under plans, specifications and regulations approved by the district board. (1927, c. 100, s. 10.)

§ **130-43. Reports.**—Upon the election of any sanitary district board it shall become the duty of the board to employ competent engineers to make a report or reports on the problems of the sanitary district, which report or reports shall be prepared and filed with the sanitary district board. Such report or reports shall embrace the following:

1. Suitable comprehensive maps showing the boundaries of the sanitary district and in a general way the location of the various parts of the work that is proposed to be done and such information as may be useful for a thorough understanding of the proposed undertaking.
2. A general description of existing facilities for carrying out the objects of the district.
3. A general description of the various plans which might be adopted for accomplishment of the objects of the district.
4. General plans and specifications for such work.
5. General descriptions of property it is proposed to be acquired or which may be damaged in carrying out the work.
6. Comparative detail estimates of cost for the various construction plans.
7. Recommendations. (1927, c. 100, s. 11.)

§ **130-44. Consideration of reports and adoption of a plan.**—The report or reports filed by the engineers pursuant to § 130-43 shall be given careful consideration by the sanitary district board, and said board shall adopt a plan, but before adopting such plan said board may, in its discretion, hold a public hearing, giving due notice of the time and place thereof, for the purpose of considering objections to such plan. The plan adopted as aforesaid shall be submitted by the sanitary district board to the State Board of Health and shall not become effective unless and until it is approved by the State Board of Health.

The provisions of this section and of § 130-43 shall apply when it shall have been determined by the sanitary district board that consummation of the plan is predicated upon the issuance of bonds of the district, except that they shall not apply in a proposed purchase of fire-fighting equipment and apparatus. Failure to observe or comply with said provisions shall not, however, affect the validity of any bonds of a sanitary district which may be hereafter issued pursuant to this article. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1951 amendment rewrote this section and made the same changes as the 1949 amendment which had not been constitutionally adopted.

§ 130-45. Resolution authorizing bond issue and purposes for which bonds may be issued.—Either before or after the adoption of the plan as aforesaid, the sanitary district board may pass a resolution or resolutions (hereinafter sometimes referred to as "bond resolution" or "bond resolutions") authorizing the issuance of bonds of the sanitary district, but bonds for two or more unrelated purposes shall not be authorized by the same bond resolution; provided, however, that bonds for two or more improvements or properties mentioned together in any one or more of the clauses of this section may be treated as being but for one purpose and may be authorized by the same bond resolution. The negotiable bonds of a sanitary district may be issued for any one or more of the following purposes, which purposes may include land, rights in land or other rights necessary for the establishment thereof:

(a) Acquisition, construction, reconstruction, enlargement of, additions or extensions to a water system or systems, a water purification or treatment plant or plants, a sanitary sewer system or systems, or a sewage treatment plant or plants, including interest on the bonds during construction and for one year after completion of construction if deemed advisable by the sanitary district board.

(b) Construction, reconstruction or acquisition of an incinerator or incinerators or other facilities for the disposal of garbage, waste and other refuse.

(c) Purchase of fire-fighting equipment and apparatus.

Such resolution shall state:

1. In brief and general terms, the purpose for which the bonds are to be issued.

2. The maximum aggregate principal amount of the bonds.

3. That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the sanitary district.

4. That the resolution shall take effect when and if it is approved by the voters of the sanitary district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in § 130-46. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the sanitary district board appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the sanitary district board of .... Sanitary District on the .... day of ...., 19...., and was first published on the .... day of ...., 19..... Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

....
Secretary, ... Sanitary
District Board.

(1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 1.)

Editor's Note. — The first 1951 amendment rewrote this section and made the same changes as the 1949 amendment which had not been constitutionally adopted. The second 1951 amendment rewrote the first paragraph and subsection (a).

§ **130-45.1. Limitation of action to set aside a bond resolution.**—Any action or proceeding in any court to set aside a bond resolution adopted pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in § 130-45. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1951 act inserted this section in the exact language of the 1949 act, which had not been constitutionally adopted.

§ **130-45.2. Publication of resolution, notice and statement.**—A resolution or notice or statement required by this article to be published shall be published in a newspaper published in the county in which the district lies or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published in such county in a newspaper which, in the opinion of the sanitary district board, has general circulation within the district. (1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1951 act inserted this section in the exact language of the 1949 act, which had not been constitutionally adopted.

§ **130-46. Call for election.**—Following the adoption of a bond resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located, if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are co-terminal with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the same shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given by publication once in some newspaper published or circulated in said district at least thirty days before the close of the registration books. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in § 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places on which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the sanitary district board of .... Sanitary District on the .... day of ...., 19...., authorizing the issuance of not exceeding $........ of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the sanitary district board of .... Sanitary District on the .... day of ...., 19...., authorizing the issuance of not exceeding $........ of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed. Two or more bond resolutions adopted by the sanitary district board, each for a separate purpose as provided in § 130-45, may be submitted at the same election and each may be stated on the same ballot as a separate proposition. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in § 130-53 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the sanitary district board and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior court of each such county. Such statement shall be published once. No right of action or defense founded upon the invalidity of such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement. (1927, c. 100, s. 14; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1951 amendment made changes in the first paragraph, rewrote the second sentence of the third paragraph and added the last paragraph. It also struck out the first sentence of the fourth paragraph and inserted in lieu thereof the present first two sentences. The same changes had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the Constitution. For a brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-47. Bonds.—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been canceled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district as provided in § 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of § 130-46. Such periods shall be for the purposes stated by clauses in § 130-45 as follows: Clause (a), forty years; clause (b), twenty years; clause (c), ten years. Such bonds shall mature in annual installments or series, the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1927, c. 100, s. 15; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1951, c. 846, s. 2.)

Editor's Note. — The first 1951 amendment rewrote the part of the first paragraph now constituting the last sentence thereof. It also added the second paragraph. The same changes had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the Constitution. The second 1951 amendment rewrote all of the first paragraph except the last two sentences.

Bonds Valid as General Tax.—Bonds issued by a sanitary district formed in accordance with this article, are a valid obligation, and binding upon the property within the district as a general tax and not an assessment of property according to benefits received. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530 (1928).

Differentiating between Property Benefited and Not Benefited. — Bonds issued by a sanitary district for sewerage and a water supply under the provision of this article, will not be declared invalid because not differentiating between property benefited and not benefited when the voters within the territory unanimously voted for their issuance, and having full notice and opportunity to do so, no one appeared to make objection on that ground. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 722 (1928).

§ 130-48. Additional bonds.—Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to have an election held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds of the sale of the bonds shall be in excess of the amount necessary for the purpose for which they were issued, such excess shall be applied to the payment of principal and interest of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1933 amendment added the last sentence.

The 1951 amendment rewrote the last sentence. The same change had been made by the 1949 amendment, which was not adopted in accordance with the applicable provisions of the Constitution.

§ 130-49. Valuation of property; determining annual revenue needed.—Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per one hundred dollars ($100.00) so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every ninety days the amount of tax so collected shall be remitted to the sanitary district board and deposited by said board in a bank in the State of North Carolina separately from other funds of the district. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in § 159-28.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located within the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred dollars ($100.00) necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political subdivisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1.)

Editor's Note. — The 1935 amendment added the clause beginning with the word "revenue" to the last sentence of the first paragraph, and added the last paragraph.

The 1951 amendment rewrote the last sentence of the second paragraph. The same change had been made by the 1949 amendment which was not constitutionally adopted.

§ **130-50. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.** — A sanitary district board may issue certificates of indebtedness in anticipation of the levying and collection of taxes to cover any or all expenses incurred by the board incident to the preparation of the engineers' report, holding of bond election or any other expenses incurred by the board. The amount of any certificates of indebtedness issued by the sanitary district board shall be included in the bond issue as hereinbefore provided. In the event that the election held within the district for the purpose of issuing bonds to provide funds for carrying out the objects of the district results in the defeat of said bonds the sanitary district board shall cause to be levied and collected a tax sufficient to pay such certificates of indebtedness or any other indebtedness incurred by the sanitary district board. Such tax shall be levied and collected in the same manner as provided in § 130-49.

A sanitary district board may borrow money under the provisions of the Local Government Act, for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loans shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed fifty per cent of the amount of uncollected taxes and other revenue for the fiscal year in which the loan is made, as estimated by the chief financial officer and certified in writing by him to the governing body. (1927, c. 100, s. 18; 1935, c. 250.)

Editor's Note. — The 1935 amendment added the second paragraph.

§ **130-51. Engineers to provide plans and supervise work; bids.**— The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

Any contract shall be let to the lowest responsible bidder submitting a sealed bid in response to a notice calling for such bid and published at least five times over a period of at least fifteen days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located.

Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars, shall be purchased from the lowest responsible bidder in the same manner as above provided.

All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19.)

§ **130-52. Service charges and rates.**—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not be unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5.)

Editor's Note. — The 1933 amendment added the qualifying clause at the end of the second sentence.

§ **130-53. Removal of member of board.**—A petition carrying the signatures of twenty-five per cent or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or misfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of a sanitary district is located. Upon receipt of such petition the board of county commissioners, or in the event that the district is located in more than one county, a joint meeting of the boards of county commissioners shall be called, shall adopt a resolution calling an election, naming election officials, naming date, and giving due notice thereof for the purpose of removing from office the member or members of the sanitary district board named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expense of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21.)

§ **130-54. Rights-of-way granted.**—A right-of-way in, along, or across any county or State highway, street or property within a sanitary district is hereby granted to a sanitary district in case such right-of-way is found by the sanitary district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway shall be done in accordance with the rules and regulations of the State Highway and Public Works Commission. (1927, c. 100, s. 22; 1933, c. 172, s. 17.)

§ **130-55. Returns of elections.**—In all elections provided for in this article the returns of such elections shall be made to the board or boards of county commissioners in which the sanitary district lies, and said board or boards of county commissioners shall canvass and declare the result of said election, and this determination of said board or boards of county commissioners upon the result of said election shall be by them certified to the sanitary district board for its action thereupon. (1927, c. 100, s. 23.)

§ **130-56. Procedure for extension of district.**—The boundaries of any sanitary district may, with the approval of the sanitary district board, be extended under the same procedure as herein provided for the creation of a sanitary district: Provided, however, that twenty-five per cent or more of the resident freeholders within the territory proposed to be annexed institute by petition the proceedings for annexation, or that ten per cent of the freeholders resident in the district to be annexed are authorized to petition for an election upon the subject of annexation, and if such petition is filed with the sanitary district board, such election shall be held within the territory to be annexed under the rules and regulations hereinbefore provided. However, if the owners of all of the real property in the territory to be annexed petition any sanitary district board to include such real property within the boundaries of said district, then and in that event no election shall be necessary and such sanitary district board is authorized and empowered to enlarge its boundaries so as to include such property in the district upon the approval of its actions by the board of county commissioners of any county or counties within which said sanitary district lies, and with the further approval of the State Board of Health.

In any case where the boundaries of a sanitary district shall have been extended and the proposition of issuing bonds of the district as enlarged shall not be approved by the voters at an election held within one year subsequent to such extension, 51% or more of the resident freeholders within the territory so annexed may, with the approval of the sanitary district board, petition the board of commissioners of the county in which the annexed territory is located, that the territory so annexed be disconnected and excluded from such sanitary district. Upon receipt of such petition the board of commissioners shall, through its chairman, transmit the petition to the State Board of Health requesting that the petition be granted. If, after a hearing, conducted under the same procedure as provided in § 130-35 of the General Statutes for the creation of sanitary districts, and after publication of notice thereof in the district, the State Board of Health shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, and shall define the boundaries of the district, which shall be the boundaries of the district as it existed before the extension. (1927, c. 100, s. 24; 1943, s. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1.)

Editor's Note. — The 1943 amendment substituted "or" for "and" in the clause beginning "or that ten per cent of the freeholders". The 1947 amendment added the last sentence of the first paragraph and the 1951 amendment added the second paragraph.

§ **130-57. Validation of creation of sanitary districts and of bond elections.** — The action of the various boards of commissioners of the various counties of the State and the action of the State Board of Health heretofore had and taken in the formation and creation of sanitary districts in the State wheresoever situate and the formation and creation, or the attempted formation and creation, of all sanitary districts in the State by the acts of the various county commissioners of the State and the State Board of Health or other officers of the State, and all elections held in any sanitary district of the State or in any district purporting to be a legal sanitary district of the State by virtue of the purported acts and authority of any board of county commissioners and the State Board of Health, for the purpose of authorizing the issue and sale of bonds of the said sanitary districts in order to secure funds for the construction and maintenance of water and/or sewer systems and all of such bonds themselves, and all the acts and procedure in anywise had and taken by any and all officials and persons in relation to the formation and creation of such sanitary districts and the issue and sale of such bonds, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are declared to be legal and binding obligations of such sanitary districts, respectively, when issued and sold as 'such. (1935, c. 357, s. 1.)

§ **130-57.01. Validating acts of State Board of Health in creating certain sanitary districts.**—All acts heretofore done or proceedings heretofore taken by the State Board of Health for the purpose of creating or establishing any sanitary district are hereby legalized and validated notwithstanding any lack of power to perform such acts or to take such proceedings and notwithstanding any defect or irregularity in such acts or proceedings, provided such sanitary districts shall have heretofore issued bonds to finance improvements therein and provided said State Board of Health purporting to act in reliance upon chapter one hundred of the Public Laws of one thousand nine hundred and twenty-seven [§§ 130-33 to 130-56], shall have adopted a resolution creating or establishing such sanitary district after holding, through its representative, a public hearing concerning the creation of such sanitary district, and a notice of such hearing, stating the time and place at which it would be held, shall have been published at least five times in a newspaper published in or near such sanitary district and having a general circulation therein. Any such district shall be, and hereby is declared to be, a body politic and corporate and shall have all the powers conferred by law upon sanitary districts. (1945, c. 89, s. 1.)

§ **130-57.02. Validating acts of certain sanitary district boards.**—All acts heretofore done or proceedings heretofore taken by the sanitary district board of any such sanitary district for the purpose of issuing bonds of such sanitary district and any bonds heretofore issued by or on behalf of such sanitary district, are hereby legalized and validated notwithstanding any lack of power to perform such acts or to take such proceedings or to issue such bonds and notwithstanding any defect or irregularity in such acts or proceedings or in the issuance of said bonds or in calling, holding or canvassing the result of any special election at which the question of issuing said bonds was submitted to the voters of such sanitary district and notwithstanding any defect or irregularity in the election, appointment or qualification of any of the members of such sanitary district board or other officers of such sanitary district, provided a majority of the qualified voters voting at an election held in such sanitary district prior to the issuance of such bonds shall have voted for the issuance of such bonds and a notice stating the date and place of such election shall have been published once at least thirty days prior to the date of such election in a newspaper published in or near such sanitary district and having a general circulation therein, and provided the aggregate principal amount of all such bonds does not exceed the maximum amount of the bonds as stated in such notice of election, and provided the Local Government Commission shall have heretofore approved the issuance of such bonds. All such bonds issued by any such sanitary district shall be, and are hereby declared to be, legal and binding obligations of such sanitary district. (1945, c. 89, s. 2.)

§ **130-57.03. Authorizing certain sanitary district boards to levy taxes.**—The sanitary district board of any such sanitary district is hereby authorized to levy, or cause to be levied, annually a special tax ad valorem on all taxable property in such sanitary district for the special purpose of paying the principal of and interest on any such bonds, and such tax shall be sufficient for such purpose and shall be in addition to all other taxes which may be levied upon the taxable property in said sanitary district. (1945, c. 89, s. 3.)

§ **130-57.1. Dissolution of certain sanitary districts.**—If any sanitary district established under this chapter has been in existence for as much as three years, and has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which the district or the greater part thereof is situated to dissolve said district. Upon receipt of such petition, the board of county commissioners shall hold a public hearing upon the question of dissolving said district. Notice of such hearing shall be posted at the courthouse door of the county or counties in which the district lies and shall also be published at least once a week for four successive weeks in a newspaper published in or near the district, and having a general circulation therein.

If, after the hearing, the county board of commissioners approves the petition, the chairman shall transmit the petition to the State Board of Health requesting that the sanitary district be dissolved. The State Board of Health or the secretary and State health officer shall name a time and place within the district at which the Board of Health, through a representative, shall hold a public hearing concerning the dissolution of the district. The State Board of Health or the secretary and State health officer shall cause notice of the hearing to be given by publication at least once a week for two successive weeks in a newspaper published in or near the district, and having a general circulation therein. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place determined by the representative of the State Board of Health. If after such hearing, the State Board of Health shall deem it advisable to comply with the request of said petition, it shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1943, c. 620; 1951, c. 178, s. 2.)

Editor's Note. — The 1951 amendment inserted "or the Secretary and State Health Officer" in the second and third sentences of the second paragraph.

§ **130-57.2. Validation of annexation of territory to sanitary districts.**—All acts heretofore done or proceedings heretofore taken by the State Board of Health, any board of county commissioners, and any sanitary district board for the purpose of extending the boundaries of any sanitary district where said territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of such sanitary district board that said territory be annexed to and be within the boundaries of such sanitary district, are hereby legalized and validated, notwithstanding any lack of power to perform such acts or to take such proceedings, and notwitstanding any defect or irregularity in such acts or proceedings. (1947, c. 463, s. 2.)

§ **130-57.3. Validation of creation or dissolution of sanitary districts and of bonds thereof.**—The action of the various boards of commissioners of the various counties of the State and the action of the State Board of Health heretofore had and taken in the formation and creation of sanitary districts in the State wheresoever situate and the formation and creation or the dissolution of any sanitary district, or the attempted formation and creation, or dissolution, of all sanitary districts in the State by the acts of the various county commissioners of the State and the State Board of Health or other officers of the State, and all elections held in any sanitary district of the State or in any district purporting to be a legal sanitary district of the State by virtue of the purported acts and authority of any board of county commissioners and the State Board of Health, for the purpose of authorizing the issue and sale of bonds of the said sanitary districts in order to secure funds for the construction and maintenance of water and/or sewer systems and all of such bonds themselves, and all the acts and procedure in anywise had and taken by any and all officials and persons in relation to the formation and creation of such sanitary districts and the issue and sale of such bonds, are hereby in all respects, legalized, ratified, approved, validated and confirmed, and all such bonds are declared to be legal and binding obligations of such sanitary districts, respectively, when issued and sold as such, and the acts and procedure in anywise had and taken by any and all officials and persons in relation to the dissolution of sanitary districts are hereby in all respects legalized, ratified, validated and confirmed. (1951, c. 178, s. 3.)

§ **130-57.4. Validation of creation of districts and selection of board members.**—All the acts and procedure in anywise had and taken in relation to the formation and creation of any sanitary district in the State and in the appointment or election of members of any district board are in all respects ratified, approved, confirmed and validated, and any members so appointed or elected shall have all the powers and may perform all of the duties required or permitted of them to be performed by this article until their successors are elected and qualified; provided, however, that any vacancy in any sanitary district board may be filled as provided in § 130-38 of the General Statutes. (1951, c. 846, s. 3.)

ARTICLE 7.

Special-Tax Sanitary Districts.

§ **130-58. Question of special sanitary tax submitted; district formed.**—Special-tax sanitary districts may be formed by the county board of health in any county, without regard to township lines, under the following conditions: Upon a petition of a majority of the freeholders within the proposed special sanitary district, in whose names real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of health, the board of county commissioners, after thirty days' notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special sanitary district, whether there shall be levied in such district a special annual tax of not more than the amount specified in the petition on the one hundred dollars valuation of property and on the poll to conduct the health work of the district as is hereinafter provided, in case such special tax is voted. The board of county commissioners shall appoint a registrar and two pollholders, and shall designate a polling place and order a new registration for such district, and the election shall be held in the district under the law governing general elections, as near as may be, and the registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of said board of commissioners. The expense of holding said election shall be paid out of the general funds of the county. The ballots to be used and the method of voting shall conform to chapter 164, Public Laws of 1929. In case a majority of the qualified voters who shall vote thereon at the election shall vote in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All moneys levied under the provisions of this section shall, upon collection, be placed to the credit of the health committee or board in such district, which committee shall be appointed by the county board of health, and such health committee shall have the authority to carry on the health work in the district as hereinafter provided. (1913, c. 154, s. 1; C. S., s. 7078; 1949, c. 880, s. 2; 1951, c. 17, s. 2.)

Local Modification. — Moore: 1933, c. 453.

Editor's Note. — The 1951 amendment rewrote the next to the last sentence so as to make the election governed by a majority of those voting. The same change had been made by the 1949 amendment which was not constitutionally adopted. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-59. Election as to enlarging district.—Upon the written request of a majority of the health committee of any special-tax district, the county board of health may enlarge the boundaries of any special-tax district established under this article, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts; and in case a majority of the qualified voters who shall vote thereon at such election in such new territory shall vote in favor of a special tax of the same rate as that voted and levied in the special-tax district to which said territory is contiguous, then the new territory shall be added to and become a part of the said special-tax district; and in case a majority of the qualified voters who shall vote thereon shall vote against said tax, the district shall not be enlarged. (1913, c. 154, s. 1; C. S., s. 7079; 1949, c. 880, s. 2; 1951, c. 17, s. 2.)

Editor's Note.—Prior to the 1951 amendment the election depended upon the vote of a majority of the qualified voters in the new territory. The same change had been made by the 1949 amendment, which was not adopted in accordance with the applicable constitutional provisions. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-60. Election to abolish or to restore district or increase tax.—Upon petition of two-thirds of the qualified voters residing in any special-tax sanitary district established under this article, endorsed and approved by the county board of health, the board of county commissioners shall order another election in said district, to be held under the provisions prescribed in this article for holding other elections. If at such election the majority of the qualified voters who shall vote thereon in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued. No election for revoking a special tax in any special-tax district shall be ordered and held in such district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on said question in said district; and no petition revoking such tax shall be approved by the county board of health oftener than once in two years. These provisions for ordering a new election to revoke a special tax in any special-tax district shall not apply to elections in such districts for increasing or restoring the special-tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this article for establishing new special-tax districts. (1913, c. 154, s. 1; C. S., s. 7080; 1949, c. 880, s. 2; 1951, c. 17, s. 2.)

Editor's Note. — The 1951 amendment inserted in the second sentence the words "who shall vote thereon." The same change had been made by the 1949 amendment which was not constitutionally adopted. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 130-61. Sanitary committee; appointment; qualifications; pay.—The county board of health of each county shall immediately after the formation of a special-tax sanitary district, and on the first Monday in July of the odd years of the calendar thereafter, appoint in each sanitary district three intelligent men of good business qualifications, who are known to be in favor of public education, who shall serve for two years from the date of their appointment as health or sanitary committeemen in their respective district and until their successors are elected and qualified. If a vacancy shall occur at any time, by death, resignation, or otherwise, it shall be the duty of the county board of commissioners to fill such vacancy. Such board shall have the power to pay out of the special-tax fund to each member of the committee thus appointed one dollar per day for not more than six days per annum. (1913, c. 154, s. 2; C. S., s. 7081; 1935, c. 357, s. 2.)

§ **130-62. Election of chairman and secretary; records kept.**—The sanitary committee, as soon as practicable after their election and qualification, not to exceed twenty days, shall meet and elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county health officer and to the State health officer. (1913, c. 154, s. 3; C. S., s. 7082.)

§ **130-63. Powers of committee; may make rules.**—The authority and duties of the special-tax sanitary committee shall be the same as those given by the Public Laws of the State to the county board of health insofar as they are applicable to the special-tax sanitary district. The committee shall have the immediate care and responsibility of the health interest of this district. They shall make such rules and regulations, pay such fees and salary, purchase supplies, and impose such penalties as in their judgment may be necessary to protect and advance the public health, but no rules or regulations they may promulgate shall conflict with the rules and regulations of the boards of health of the State and county of which the district is a part. (1913, c. 154, ss. 4, 5; C. S., s. 7083.)

§ **130-64. Employment of health officer; disbursement of funds.**—The committee shall have authority to employ a registered physician of the State as health officer, and if he should persistently neglect the performance of his full duties for a period of ninety days he may be dismissed by the committee and his successor employed to fill the unexpired term. If the committee is satisfied that the provisions of this article have been complied with, they shall give an order approved by the chairman and secretary of the committee on the treasurer of the county, payable to the health officer for the full monthly amounts due for services in accordance with the contract, but monthly statements of the work done by the health officer shall be made to the committee; and he shall supply reports promptly of such information as he can on blanks supplied by and returnable to the State Board of Health. Orders for all funds to the credit of the special-tax sanitary district before it shall be a valid voucher on the county treasurer must be first approved by the chairman and secretary of the committee for the sanitary district. (1913, c. 154, s. 4; C. S., s. 7084.)

§ **130-65. Powers and duties of health officer.**—The duties and powers of the health officer elected for the special-tax sanitary district shall be the same as those prescribed by the Public Laws of the State for the county health officer, insofar as they are applicable to the sanitary district, and such additional duties as may be imposed on him by the special-tax sanitary committee. (1913, c. 154, s. 6; C. S., s. 7085.)

ARTICLE 8.

Local and District Health Departments.

§ **130-66. Local and district health departments authorized.** — 1. Creation of Departments Authorized.—The State Board of Health is hereby authorized to use any available funds at its command, not otherwise appropriated, to establish full-time local and district health department service for any town, city and county, or group of such units in the State where the local governing powers desire the formation of such a department and are willing to assist financially in the enterprise, to an amount at least equal to the amount of State financial assistance.

2. When District Health Departments Including More Than One County Shall Be Formed.—Under the rules and regulations established by the State Board of

Health of North Carolina, district health departments or units including more than one county may be formed when the following conditions exist:

(a) When the funds derived from the tax levy made under the authority of § 130-29 or such greater rate as a county may levy, plus available State and other funds, are insufficient to provide a minimum standard department of one medical officer, two nurses, one sanitary officer, one clerk, and a regular dental program.

(b) When in the opinion of the State Board of Health of North Carolina special problems or special projects arise which can be handled more advantageously on a district basis and the consolidation is approved by the State health officer and the health department or board of health of each county involved.

3. Organization Plans for District Health Departments.—Where two or more counties are combined into a district health department, the State health officer shall choose three or more ex officio members, naming at least one from each participating county, including one chairman of a county board of commissioners, one mayor of a town which is the county seat, and one county superintendent of schools. These ex officio members shall be appointed by the State health officer during the first week of each December following the general election in which members of the General Assembly are elected and shall serve for a period of two years from and after date of appointment. The terms or appointments of all ex officio members heretofore made prior to March 25, 1947, shall end on the 30th day of November, 1948. These ex officio members shall hold an annual election meeting the first week in January of each year for the purpose of electing public members; the public members shall be four in number, one of whom shall be a dentist, one a physician, one a registered pharmacist, and the other one shall be a public spirited citizen. Where either of the three specified public members, namely a physician, or a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, this place shall be filled with a public spirited citizen. The first election meeting of the ex officio members shall be the first week in January, one thousand nine hundred and forty-six, and at this meeting one of the public members shall be elected or appointed for a period of four years, one for three years, one for two years, and one for one year; thereafter one member shall be elected each year for a term of four years; in cases where more than three counties are combined into a district there shall be at least one ex officio member, who is a chairman of the board of county commissioners, mayor of the town which is the county seat, or a county superintendent of schools, from each county; in cases where more than one city in a county participates by law in the support of the health department, the mayor of each such participating city or town shall be ex officio a member of the board of health; in all instances the ex officio members shall elect four members as hereinbefore provided; the board of health shall elect its chairman, who shall not have the right to vote except in case of a tie; a majority of the members of the district board of health shall constitute a quorum and the district health officer shall act as secretary to such board of health.

(a) All vacancies in the ex officio membership of a district board of health caused by death, resignation or any other reason, shall be filled by appointments made by the State health officer. Such appointments shall be made from any of the public officers or officials of the county of the member causing the vacancy, and the duties of such public officials as members of said district board of health shall be ex officio duties. Such appointments to fill vacancies of ex officio members shall be for the unexpired term of the member or members causing the vacancy or vacancies and shall extend until the time for the next regular appointments of ex officio members. All vacancies in membership of the public members of a district board of health shall be filled by the district board of health at its next regular meeting following the creation of the vacancy. The member or members appointed to fill a vacancy of a public member shall be from the same county as the member causing the vacancy. In case any public member so appointed is a public officer or official, his membership and duties on the district board of health as a public member shall be deemed to be ex officio.

4. Regulations.—The rules, regulations and ordinances of the district board of health shall apply to municipalities within a county or counties composing the district, but the district board of health shall not have power to pass special ordinances covering a municipality only, such authority being implicit in and retained by the governing body of the municipality. The district board of health shall have the immediate care and responsibility of the health interests of its district. It shall meet annually in some city or town in the district designated by it, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interests of the district require it. It shall make such rules and regulations, and pay all lawful fees and salaries, and enforce such penalties as in its judgment shall be necessary to protect and advance the public health. If any person shall violate the rules and regulations made and established by a district health department, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty days.

5. District Health Officer.—The district board of health shall elect a health officer meeting the qualifications set forth by the Merit System Council as provided by chapter one hundred and twenty-six of the General Statutes of North Carolina, and also subject to the approval of the State health officer. The term of office shall be at the pleasure of the district board of health. Emergency and temporary appointments may be made when necessary with the approval of the State health officer. When, in the case of a vacancy, the district board of health fails to elect a health officer within sixty days after receiving notification from the State health officer that a vacancy exists, it shall be the duty of the State health officer to appoint a health officer for the district. In counties composing a district the election of a county physician shall be by the board of commissioners of each county and the resident members of the district board of health in a joint session. Such election shall take place during January of the odd years of the calendar and shall be for a two-year term. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and the county physician. The members of the district board of health while on duty shall each receive a per diem of four dollars ($4.00). (1935, c. 142, s. 1; 1945, c. 1030, s. 1; 1947, c. 474, ss. 1, 2; 1949, c. 159.)

Editor's Note. — The 1945 amendment added subsections 2 through 5. The 1947 amendment inserted the second and third sentences of subsection 3 and added paragraph (a) thereto. The 1949 amendment added the last sentence of subsection 4.

For brief comment on the 1949 amendment, see 28 N. C. Law Rev. 84.

A district board of health is a creature of the legislature and has only such powers and authority as are given it by the legislature. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

It is without authority to prescribe criminal punishment for the violation of its rules and regulations promulgated under subsection 4 of this section, since such board is without power and authority to make laws, and if the statute be deemed sufficiently broad to grant it such authority, the delegation of such power is unconstitutional. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

While a district board of health is given power and authority to make rules and regulations, and to enforce penalties, it is not given the power and authority to make laws. Thus in declaring it to be unlawful for any person to sell milk in the district without having first obtained a permit, and in prescribing criminal punishment for a violation of the requirement, a district board of health exceeded its authority. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

The 1949 Amendment Is Not Retroactive. — The 1949 amendment of subsection 4 is not applicable to a prior violation of a rule or regulation established by a district board of health. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

§ 130-67. Authority of district health officer; election of county physician unaffected.—Where there is a district health department, the district health officer shall have the authority now delegated to town, city and county health officers and town, city and county quarantine officers in each of the several counties or units comprising the district, by §§ 130-22 and 130-24: Provided, that nothing in this article shall affect in any way the election of a county physician in counties comprising a district health department. (1935, c. 142, s. 2.)

§ **130-68. Article not obligatory upon counties.**—Nothing in this article shall be so construed as to require any county to enter into this agreement unless it so desires. (1935, c. 142, s. 3.)

Local Modification. — Martin: 1935, c. 142, s. 4; 1937, c. 17; Rockingham: 1935, c. 142, s. 4.

SUBCHAPTER II. VITAL STATISTICS.

Article 9.

Registration of Births and Deaths.

§ **130-69. State Board of Health to enforce regulations.**—The State Board of Health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms, and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in the succeeding section, and in the Central Bureau of Vital Statistics at the capital of the State. The said Board shall be charged with the uniform and thorough enforcement of the law throughout the State, and shall from time to time recommend to the General Assembly any additional legislation that may be necessary for this purpose. (1913, c. 109, s. 1; C. S., s. 7086.)

§ **130-70. State Registrar.**—The secretary of the State Board of Health shall be State Registrar of Vital Statistics, and shall have general supervision over the Central Bureau of Vital Statistics, which is hereby authorized to be established by said Board. Adequate fireproof space in one of the State buildings for filing cases for the death and birth certificates made and returned under this article shall be provided by the Board of Public Buildings and Grounds. (1913, c. 109, s. 2; C. S., s. 7087, 1941, c. 224.)

§ **130-71. Registration districts.**—For the purposes of this article the State shall be divided into registration districts as follows: Each city, each incorporated town, and each township shall constitute a local registration district. (1913, c. 109, s. 3; C. S., s. 7088.)

§ **130-72. Control of Board over districts.**—The State Board of Health shall have authority to abolish or consolidate existing registration districts, and/or create new districts when, in the judgment of the Board, economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3.)

§ **130-73. Appointment of local registrar.**—The chairman of every board of county commissioners in the State shall appoint a local registrar of vital statistics for each township in his county, and the mayor of every incorporated town or city in the State shall appoint a local registrar of vital statistics for his town or city, and the chairman of the boards of county commissioners and the mayors of the cities or towns shall notify the State Registrar, in writing, of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year in which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. In cities where health officers or other officials are, in the judgment of the State Board of Health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the State Registrar, and to all the provisions of this article. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by a local registrar appointed by the same official who appointed the local registrar whose retirement creates the vacancy. Any chairman of a board of county commissioners or mayor of a city or town who appoints a local registrar to fill a vacancy in the office of local registrar shall notify the State Registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the chairman of the board of county commissioners for the township local registration office, and by the mayor of the city or town for the town or city registration office. Each local registrar shall be a bona fide resident of the township, city, or precinct for which he is appointed, and removal from the township, city, or precinct shall terminate the office. (1913, c. 109, s. 4; 1915, c. 20; C. S., s. 7089.)

§ **130-74. County health officer may act as registrar.**—The State Board of Health shall have authority and power to designate and appoint the wholetime health officer of the county as registrar for that county, or fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the county health officer under such appointment, shall be used by the local board of health in its discretion for health service. (1933, c. 9, s. 3.)

§ **130-75. Removal of local registrar.**—Any local registrar who, in the judgment of the secretary of the State Board of Health, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required thereby, shall be forthwith removed from his office by the secretary of the State Board of Health, and such other penalties may be imposed as are provided under § 130-105. (1913, c. 109, s. 4; C. S., s. 7090.)

§ **130-76. Appointment of deputy and sub-registrars.**—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the State Registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the State Registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S., s. 7091.)

§ **130-77. Permit for burial or other disposition of body.**—The body of any person whose death occurs in this State, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this article other than the compensation provided in § 130-102. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092.)

§ 130-78. Stillborn children to be registered.—A stillborn child shall be registered as a birth and also as a death, but only one certificate shall be required of such birth and death, which shall be filed with the local registrar, the certificate to contain, in place of the name of the child, the word "stillbirth"; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillbirth," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall sign as the attendant but shall not sign the medical certificate of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in this article. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1.)

Editor's Note.—Prior to the 1933 amendment this section required a separate certificate of the birth and death of a stillborn child.

The 1951 amendment rewrote the last sentence. The amendatory act inadvertently referred to this section as "13-78" when "130-78" was obviously intended.

§ 130-79. Contents of death certificate.—The certificate of death shall contain, as a minimum, those items prescribed and specified on the standard certificate of death as prepared by the national agency in charge of vital statistics and as the same may be changed or amended by the North Carolina State Registrar of Vital Statistics.

The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; C. S., s. 7094; 1949, c. 161, s. 1.)

Editor's Note. — The 1949 amendment rewrote this section.

§ 130-80. Death without medical attendance; duty of undertaker and officials. — In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification. When there is no local health officer or person acting as health officer, the registrar shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death. (1913, c. 109, s. 8; C. S., s. 7095; 1951, c. 1091, s. 2.)

Editor's Note. — The 1951 amendment rewrote a part of this section.

§ 130-80.1. Preparation of death certificates for members of the armed forces killed outside of the United States.—The State Registrar of Vital Statistics, upon presentation of an official notice of death from the United States government for a member of the armed forces killed outside of the United States, shall prepare a death certificate showing such facts pertaining to such death as may be available from the government notice. Such certificate shall be placed on file in the office of the State Registrar and shall be permanently preserved. The State Registrar of Vital Statistics shall forward a copy of such certificate to the register of deeds of the county of the last known residence of such deceased person. Certified copies of such certificates shall be prepared by the State Registrar or his duly authorized agent, upon request, and such copies shall be accepted as prima facie evidence of the facts stated therein. (1949, c. 174.)

§ 130-81. Undertaker to file death certificate and obtain permit.—The undertaker or person acting as undertaker shall file the certificate of death with the local registrar of the district in which the death occurred, and obtain a burial or removal permit, prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in §§ 130-79 and 130-80. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. He shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company, this permit to accompany the corpse to its destination, where, if within the State, it shall be delivered to the person in charge of the place of burial. (1913, c. 109, s. 9; C. S., s. 7096.)

§ 130-82. Sales of caskets regulated.—Every person, firm, or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's postoffice address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the State Registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling caskets shall report to the State Registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the State Registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Board of Health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S., s. 7097.)

§ **130-83. Permit for burial in State.**—If the interment, or other disposition of the body is to be made within the State, the wording of the burial or removal permit may be limited to a statement by the Registrar, over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the State Registrar. (1913, c. 109, s. 10; C. S., s. 7098.)

§ **130-84. Interment without permit forbidden.**—No person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099.)

§ **130-85. Registration of births.**—The birth of every child born in this State shall be registered as hereinafter provided. (1913, c. 109, s. 12; C. S., s. 7100.)

§ **130-86. Birth certificate to be filed within five days.**—Within five days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Board of Health with a view of procuring a full and accurate report with respect to each item of information enumerated in § 130-89. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified in the following section, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signature, when requested to do so by the local registrar. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7101.)

Editor's Note. — The reference in the last sentence to "the following section" was intended to refer to § 130-89, which prior to the 1949 amendment specified the numerous items a birth certificate should contain.

§ 130-87. Registration of birth certificate more than five days and less than four years after birth.—Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. (1941, c. 126.)

§ 130-88. Registration of birth certificate four years or more after birth.—The State Board of Health is authorized to promulgate rules and regulations under which any birth which has not been registered with the Bureau of Vital Statistics within four years after birth, as provided in § 130-86 or 130-87, may be registered with the register of deeds of the county in which the birth occurred: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. Each such birth must be registered in duplicate on forms approved by the State Board of Health and furnished by the State Registrar. The register of deeds shall forward the original and duplicate certificate to the Bureau of Vital Statistics for final approval. If the certificate complies with the rules and regulations of the State Board of Health and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

Certificates registered with the register of deeds under this section shall contain the date of the delayed filing and be distinctly marked "Delayed;" and those altered after being filed shall contain the date of alteration and be distinctly marked "Altered".

All copies of birth certificates registered under the provisions of this section, properly certified by the State Registrar, shall have the same evidentiary value as those registered within five days after birth.

The register of deeds shall receive a fee of fifty cents for each registration, to be paid by the registrant. (1941, c. 126.)

§ 130-88.1. Register of deeds may perform notarial acts. — The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration of a birth certificate four years or more after the birth.

All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds, prior to the ratification of this section, relative to the registration of birth certificates four years or more after birth, are hereby validated. (1945, c. 100.)

§ 130-89. Contents of birth certificate. — The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics and as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics: Provided, that in case of an illegitimate birth, the father's name shall not be shown on the certificate without his written consent and, provided further, that in case of an illegitimate birth, the last name of the child shall be the same as that of the mother or, if requested in writing, the name of the child shall be the same as the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, then the person or persons caring for such child may make such a request for such change. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2.)

Editor's Note. — The 1949 amendment rewrote this section, which formerly contained numerous items required to appear in a birth certificate.

§ 130-90. Validation of irregular registration of birth certificates.—The registration and filing with the Bureau of Vital Statistics of the birth certificate of any person whose birth has not been registered within five days of birth under § 130-86 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by § 130-86. (1941, c. 126.)

§ 130-91. Blank furnished for report of name.—When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (1913, c. 109, s. 15; C. S., s. 7103.)

§ 130-92. Institutions to keep records of inmates.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this article, which are required in the forms of the certificates provided for by this article, as directed by the State Registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S., s. 7104.)

Editor's Note. — See note 13 N. C. Law Rev. 326, on "Admissibility of Medical Records in Evidence."

§ 130-93. Certificate of identification in lieu of birth certificate where parentage cannot be established.—A certificate of identification for a foundling child whose parentage cannot be established shall be filed with the local registrar of vital statistics of the district in which the child was found by a juvenile court which determines that the child is a foundling. This certificate of identification shall contain such information and be in such form as the State Board of Health may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3.)

§ 130-93.1. Certificate of identification for child of foreign birth.—In the event that a new birth certificate cannot be obtained for an adopted child born in a foreign country and having legal settlement in this State, the information pertaining to the birth as provided for in § 130-102 may be filed for such child with the State Registrar, provided that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2.)

§ 130-94. State Registrar to supply blanks; to perfect and preserve birth certificates.—The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar. No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed: Provided, that a new certificate of birth shall be made by the State Registrar whenever:

(a) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

(b) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(c) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the State Registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall notify the local registrar, or the registrar of deeds, providing the copy has been filed with him, that a new certificate of birth has been made and such facts shall be noted on the copy of the certificate of birth on file, if any. The State Registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered, such index to be arranged alphabetically, in the case of deaths, by the name of decedents, and in case of births, by the names of fathers and mothers. No persons other than those authorized by the State Registrar shall have access to the original birth and death record. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3.)

Editor's Note. — The 1941 amendment inserted that part of this section beginning with the proviso following the fourth sentence and extending down to, but not including, the last paragraph. The 1949 amendment added the last sentence of this section.

§ **130-95. To inform registrars as to dangerous diseases.** — He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Board of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S., s. 7106.)

§ **130-96. Birth certificate as evidence.**—At the expiration of five years after the ratification of this article, certified copies of birth registration certificates shall be accepted by public school authorities in this State as prima facie evidence of age of children registering for school attendance, and no other proof shall be required. At the expiration of fourteen years from the passage of this article certified copies of birth registration certificates shall be required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof shall be required from children born in this State or states which for fourteen years previous to the date of such certificate have had registration laws essentially identical with this article. When, however, it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S., s. 7107.)

§ **130-97. Church and other records filed and indexed; fees for transcript.**—If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this State, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the State Registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of fifty cents per hour or fraction of an hour necessarily consumed in making such transcript and to a fee of fifty cents for the certificate, which fees shall be paid by the applicant. (1913, c. 109, s. 17; C. S., s. 7108.)

§ **130-98. Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.**—Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the State Registrar of Vital Statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the said Registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner. (1941, c. 297, s. 1.)

§ **130-99. Duties of local registrar as to birth and death certificates; reports.** — Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the State Registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make two complete and accurate copies of each birth and each death certificate registered by him on blanks supplied by the State Registrar. He shall, on the fifth day of each month, transmit to the State Registrar all original certificates registered by him for the preceding month and shall, at the same time, transmit to the register of deeds of the county a copy of each certificate of birth or death registered by him for the preceding month and shall retain one copy of each certificate for his own files. The register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the State Registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673.)

Editor's Note. — The 1943 amendment rewrote the last four sentences as changed by prior amendments.

§ **130-99.1. State Registrar to forward copies of certificates of nonresidents.**—Upon receipt of the original certificates of birth, death, and stillbirth from the local registrars of vital statistics, the State Registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within thirty days to the register of deeds of the county of residence. (1949, c. 133.)

§ **130-100. Delivery of data to health officer.**—Each local registrar of vital statistics serving in any county or municipality of North Carolina in which there is employed a whole-time county or municipal health officer shall, on or before the fifth day of each month, deliver by mail or in person to the health officer of his respective county or municipality such data from birth and death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said whole-time county or municipal health officer, and as authorized by the State Registrar of Vital Statistics.

All forms necessary for the use of local registrars in complying with this section shall be supplied, without charge, by the State Registrar of Vital Statistics.

Any local registrar who shall fail, neglect, or refuse to perform the duties required by this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00). (1925, c. 53.)

§ **130-101. Pay of local registrars.**—Each local registrar shall be paid the sum of fifty cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the State Registrar, as required by this article. And in case no births or deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers. The State Registrar shall certify every six months to the treasurers of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C. S., s. 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306.)

Local Modification. — Bladen: 1949, c. 480; Mitchell: 1951, c. 935, s. 1.

Editor's Note. — The 1920 amendment increased the compensation for each certificate and report from twenty-five cents to fifty cents. And the 1949 amendment struck out the former provisions relating to incorporated municipalities.

§ 130-102. Certified or photostatic copy of records; fee.—The State Registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. Such certified copy of the birth record shall be issued in the form of a birth registration card which shall include only the full name, birth date, city and county of birth, race, sex, date of filing, and birth certificate number: Provided, that a full and complete copy of the birth certificate shall be supplied upon request to the registrant, if of legal age; or the parent or parents; or to public welfare or public health agencies; or to duly licensed private welfare agencies upon the approval of the State Registrar; or to any other person, for good cause shown, upon the order of a judge of the superior court. Such birth registration card, properly certified by the State Registrar or his duly authorized agent, shall be prima facie evidence of the facts stated therein. The United States Census Bureau, may, however, obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of the fees herein prescribed, and for transcripts so furnished the State Registrar may receive from the Census Bureau such compensation for this service, as the State Board of Health may approve. Any copy of the record of a birth or death, properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the State Board of Health. Provided, that upon the receipt of a certificate of birth as provided in § 130-99, unless said child was born out of wedlock, the State Registrar shall within three months forward a certified copy thereof for the child to the address of the mother, if living; and if not, to the father or person standing in loco parentis to said child. No fee shall be collected for supplying this certificate.

In lieu of a certified copy of the record of any birth or death registered under the provisions of this article, the State Registrar may, upon request, supply to any applicant a photostatic copy of such record with a photostatic copy of the certificate of the State Registrar signed by a facsimile of his signature; and such photostatic copy of the record of a birth or death shall be prima facie evidence in all courts and places of the facts therein stated. The State Registrar shall have the power and authority to appoint one or more employees or agents of the North Carolina State Board of Health; and upon such appointment by the State Registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the State Registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or the facsimile of the State Registrar affixed thereto shall be prima facie evidence in all courts and places of the facts therein stated. The provisions of this section shall not apply to copies of birth certificates of adopted children. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; C. S., s. 7111; 1941, c. 297, s. 4; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3.)

Editor's Note. — The 1945 amendments added the proviso and sentence at the end of the first paragraph and the 1947 amendment added the second paragraph.

The 1949 amendment inserted the second and third sentences of the first paragraph.

The 1951 amendment deleted the words

"state of birth" in the second sentence and inserted in lieu thereof "city and county of birth". It also added the last sentence.

Death Certificate as Evidence of Cause of Death.—The exclusion of the death certificate of insured, offered for the purpose of showing the cause of death, was not reversible error, it not appearing whether the cause of death was stated therein as a fact or as an opinion, the certified copy of such record being prima facie evidence of the facts stated therein but not conclusions or opinions expressed therein, and it further appearing that the cause of death was not perforce material. Rees v. Jefferson Standard Life Ins. Co., 216 N. C. 428, 5 S. E. (2d) 154 (1939).

Error in Admission Cured by Verdict.—In an action for wrongful death plaintiff objected to admission in evidence of his testator's death certificate, which had not been certified in accordance with this section, plaintiff contending that admission of the certificate was prejudicial on the ground that the contents supported an inference that testator's death did not result from the accident in suit. The verdict of the jury in plaintiff's favor on the issue of negligence rendered the error, if any, in the admission of the certificate harmless. McClamroch v. Colonial Ice Co., 217 N. C. 106, 6 S. E. (2d) 850 (1940).

Cited in State v. Trippe, 222 N. C. 600, 24 S. E. (2d) 340 (1943).

§ 130-103. Information furnished to officers of American Legion or other veterans' organization.—Upon application to the Bureau of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, or by any officer of any other veterans' organization chartered by Congress or organized and operating on a State-wide or nation-wide basis, it shall be the duty of the Bureau of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to members or former members of the armed forces of the United States who served in the First or Second World War and members of their families and/or beneficiaries under government insurance or adjusted compensation certificate issued to such member or former member of the armed forces of the United States: Provided, that the State Registrar shall furnish to any American Legion Post in this State, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this section. (1931, c. 318; 1939, c. 353; 1945, c. 996.)

Editor's Note. — The 1939 amendment added the proviso. And the 1945 amendment made this section applicable to officers of other veterans' organizations besides the American Legion and to veterans of the Second World War.

§ 130-103.1. Registers of deeds to issue birth certificates without cost to persons entering military forces.—The several registers of deeds of the State of North Carolina are authorized and directed to issue, free of cost, birth certificates to persons about to enter the United States military forces. (1951, c. 1113.)

§ 130-104. Violations of article; penalty.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

1. Inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found;
2. Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;
3. Willfully alter, otherwise than as provided by § 130-94, or shall falsify any certificate of birth or death, or any record established by this article;
4. Being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person

charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required;

5. Being a State Registrar, a chairman of a board of county commissioners, a mayor of a city or town, a local registrar, a deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the State Registrar thereunder;

Shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars, and for each subsequent offense not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not more than thirty days. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112.)

§ **130-105. Duties of registrars and others in enforcing this article.**—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the State Registrar. He shall make an immediate report to the State Registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The State Registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the State, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The State Registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of the provisions of this article to the prosecuting attorney of the county, or the solicitor of the district, with a statement of the facts and circumstances; and when any such case is reported to him by the State Registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall likewise assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S., s. 7113.)

§ **130-106. Local systems abrogated.**—No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this State other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S., s. 7115.)

§ **130-107. Establishing fact of birth by persons without certificate.**—1. Any person born in the State of North Carolina not having a duly recorded certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his or her legal residence or place of birth, setting forth the date, place, and parentage of his or her birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon filing said petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of such birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The said clerk shall certify the same to the State Bureau of Vital Statistics and the same shall thereupon be recorded in the State Bureau of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The fees charged hereunder by the clerk shall not exceed two dollars ($2.00).

2. The record of birth established by such person under this section when so recorded shall become a public record, and shall be accepted as such by the courts and other agencies of this State in the same manner as other public records.

3. The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122.)

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

Article 10.

Water Protection.

§ 130-108. Persons supplying water to protect its purity.—In the interest of the public health, every person, company, or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed. (1899, c. 670, s. 1; 1903, c. 159, s. 1; Rev., s. 3058; 1911, c. 62, s. 24; C. S., s. 7116.)

Cited in Hudson v. Morganton, 205 N. C. 353, 171 S. E. 329 (1933).

§ 130-109. Board of Health to control and examine waters; rules; penalties.—The State Board of Health shall have the general oversight and care of all inland waters, and shall from time to time, as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said Board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. Any individual, firm, corporation, or municipality, or person responsible for the management of water supply, failing to comply with said rules and regulations, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. (1911, c. 62, s. 24; C. S., s. 7117.)

§ 130-110. Systems of water supply and sewerage; plans submitted; penalties.—The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, corporations, or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, or firms which may be affected thereby. All such boards of directors, authorities, corporations, and firms are hereby required to give notice to said Board of their intentions in the premises and to submit for its advice outlines of their proposed plans or schemes in relation to water supplies and disposal of sewage, and no contract shall be entered into by any State institution or town for the introduction of a system of water supply or sewage disposal until said advice shall have been received, considered, and approved by the said Board. For the purpose of carrying out the general provisions of this and the preceding sections, every municipal or private corporation, company, or individual supplying or authorized to supply water for drinking or other domestic purposes to the public shall file with the secretary of the State Board of Health, within ninety days after the receipt of notice from said secretary, certified plans and surveys, in duplicate, pertaining to the source from which the water is derived, the possible source of infections thereof, and the means in use for the purification thereof, in accordance with the directions to be furnished by the said secretary. Failure on the part of any individual, firm, corporation, or municipality to comply with this section shall be a misdemeanor, and upon conviction those responsible therefor shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the court. (1911, c. 62, s. 24; C. S., s. 7118.)

§ **130-111. Condemnation of lands for water supply.**—All municipalities operating water systems and sewer systems, and all water companies operating under charter from the State or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law under the chapter Eminent Domain. (1903, c. 159, s. 16; 1905, c. 287, s. 2; 1905, c. 544; Rev., s. 3060; 1911, c. 62, s. 25; C. S., s. 7119.)

§ **130-112. Compensation for land.**—If damages shall be claimed for the use of such lands, and the parties cannot agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law under the chapter Eminent Domain. (1911, c. 62, s. 27; C. S., s. 7120.)

§ **130-113. Inspection of watersheds.**—The municipality or water company shall have quarterly sanitary inspections made of the entire watershed of any waterworks that derives its water from a surface supply, except in those cases where the supply is taken from large creeks or rivers that have a minimum daily flow of ten million gallons, in which case the inspection shall apply to the fifteen miles of watershed above the waterworks intake. Whenever in the opinion of the board of health of the city or town to which the water is supplied, or, where there is no such local board of health, in the opinion of the county board of health, or county physician or county health officer, or in the opinion of the State Board of Health, there is special reason to apprehend the infection of the water from any particular locality by the germs of typhoid fever or cholera, then the municipality or water company shall cause to be made at least once in every week a sanitary inspection of that particular locality. The inspection of the entire watershed as herein provided for shall include a particular examination of the premises of every inhabited house on the watershed, and, in passing from house to house, a general inspection for dead bodies of animals or accumulations of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The sanitary inspector shall give in person to the head of each household on the watershed, or, in his absence, to some member of the household, the necessary directions for the proper sanitary care of his premises, and shall deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the State Board of Health. Full report in duplicate of all such inspections shall be made promptly by the sanitary inspector to the secretary of the State Board of Health, and their accuracy certified to by the affidavit of the inspector.

The authorities of any town or city that makes use of a public surface water supply or the officers of a public surface water supply company may make such additional inspections as such officials may deem necessary. (1899, c. 670; 1903,

c. 159, s. 2; Rev., ss. 3045, 3046; 1911, c. 62, s. 28; 1919, c. 71, s. 14; C. S., s. 7121; Ex. Sess. 1921, c. 49, s. 1.)

Editor's Note. — Prior to the 1921 amendment the duty of inspection was on the State Board of Health.

Cited in Hudson v. Morganton, 205 N. C. 353, 171 S. E. 329 (1933).

§ **130-114. Inspectors may enter premises.**—Each sanitary inspector is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required. (1899, c. 670, s. 8; 1903, c. 159, s. 10; Rev., s. 3050; 1911, c. 62, s. 30; C. S., s. 7122.)

§ **130-115. Control of residents on watersheds.**—Every person residing or owning property on the watershed of a lake, pond, or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him in the matter hereinbefore set forth directly by the municipal health officer or by the State Board of Health. Anyone refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (1903, c. 159, s. 7; Rev., ss. 3049, 3859; 1911, c. 62, s. 31; C. S., s. 7123.)

Instructions Must Be Furnished. — If the instructions as to sanitation required by this section are not furnished, one is not subject to a penalty, since this is a condition precedent to the enforcement of this section. Hudson v. Morganton, 205 N. C. 353, 171 S. E. 329 (1933).

Allegation. — It is not necessary to allege that defendant owned or lived upon the land embraced in the municipal watershed, to state a cause of action under this section and § 130-108. Morganton v. Hudson, 207 N. C. 360, 177 S. E. 169 (1934).

§ **130-116. Defiling water supply misdemeanor.**—If any person shall defile, corrupt, or make impure any well, spring, drain, branch, brook, creek, or other source of public water supply by collecting and depositing human excreta on the watershed, or depositing or allowing to remain the body of a dead animal on the watershed, or in any other manner, and if any person shall destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor. (1850, c. 104; R. C., c. 34, s. 97; Code, s. 1114; 1893, c. 214; 1903, c. 159, s. 12; Rev., ss. 3457, 3857; 1911, c. 62, s. 32; C. S., s. 7124.)

§ **130-117. Discharge of sewage into water supply prohibited.**—No person, firm, corporation, or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the State Board of Health; and the continued flow and discharge of such sewage may be enjoined upon application of any person.

If any person, firm, or corporation, or officer of any municipality having a sewerage system in charge shall violate the provisions of this section he shall be guilty of a misdemeanor. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125.)

Constitutionality.—This section is not unconstitutional as to taking property without condemnation and without compensation, but is a valid exercise of the police power of the State to secure the public health. Durham v. Eno Cotton Mills, 141 N. C. 615, 54 S. E. 453 (1906); Shelby v. Cleveland Mill, etc., Co., 155 N. C. 196, 71 S. E. 218 (1911); North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019 (1917).

Sewage Defined.—The meaning of "sewage," under this section, is confined to the liquid and solid matter flowing from the water closets through the sewer and drain. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465 (1907).

Dyestuff and fecal matter from privies,

which were not passed through sewer to river from which water supply was received, do not come within the meaning of this section. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465 (1907).

This section applies only when a public drinking-water supply is taken from the stream, in which instance proof of any injurious effect upon plaintiff's water supply is not required. Banks v. Burnsville, 228 N. C. 553, 46 S. E. (2d) 559 (1948).

In a suit by private individuals to restrain a municipality from emptying untreated sewage into a stream from which a public drinking-water supply is not taken, a complaint which fails to allege that plaintiff's own land lies along or adjacent to the stream and that the acts complained of constitute a nuisance resulting in continuing, irreparable damages, is demurrable. Banks v. Burnsville, 228 N. C. 553, 46 S. E. (2d) 559 (1948).

This section does not impose the mandatory duty upon the trial judge of enjoining a municipality from discharging raw sewage into a stream from which another municipality takes its water supply, and where the order prayed for would cause untold hardship upon the inhabitants of defendant municipality, the court's order denying the injunctive relief but providing that the judgment should not prevent the bringing of another suit for the same relief upon a change in the fundamental conditions, will be upheld on appeal. Smithfield v. Raleigh, 207 N. C. 597, 178 S. E. 114 (1935).

And Surrounding Facts Are to Be Considered. — The words "may be enjoined" as used in this section, clearly demonstrate that surrounding facts and circumstances must be considered in entering a peremptory order of injunctive relief. Smithfield v. Raleigh, 207 N. C. 597, 178 S. E. 114 (1935).

Proof of Injurious Effect Unnecessary.— An injunction will issue under this section against emptying sewage into a river, without proof of any injurious effect on plaintiff's water supply. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465 (1907).

No Right by Prescription Acquired. — The unlawful emptying of untreated sewage into a stream without hindrance or question on the part of the health authorities or others, cannot confer upon a town the right to continue emptying therein contrary to the express provisions of the statutes, or acquire for it a prescriptive right as against the public, however long the same may have continued; nor can the town acquire a vested right therein to defeat the enforcement of the provisions of the statute subsequently passed. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019 (1917).

Nor can title be lost to the public by non-user, unless by legislative enactment. Shelby v. Cleveland Mill, etc., Co., 155 N. C. 196, 71 S. E. 218 (1911).

No Special Treatment for Sewage Prescribed. — This section does not require that an arbitrary or fixed method of treating sewage before emptying into a stream, etc., should be established in advance, but that the defendant confer with the State Board of Health and obtain and follow the reasonable requirements prescribed for the conditions presented. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019 (1917).

Not Confined to Watershed Distance. — This section is not confined to the watershed of 15 miles above the intake as defined in § 130-113, but extends beyond 15 miles from the intake of any stream from which water is taken to be supplied to the public for drinking purposes. Durham v. Eno Cotton Mills, 141 N. C. 615, 54 S. E. 453 (1906). In case of menace to a lower town seventy-five miles below the place where the sewer empties, an injunction will be granted. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019 (1917).

Action by Secretary of the State Board of Health.—In a suit to enjoin a town from emptying untreated sewage into a stream, the Secretary of the State Board of Health, in his individual name, comes within the meaning of the statute, that the act "may be enjoined on the application of any person," and the question is not presented as to the authority of the Board, acting as such, to maintain the action. North Carolina State Board v. Commissioners, 173 N. C. 250, 91 S. E. 1019 (1917).

Cited in Veazey v. Durham, 232 N. C. 744, 59 S. E. (2d) 429 (1950).

§ **130-118. Cemeteries on watersheds forbidden.**—No burying ground or cemetery shall be established on the watershed of any public water supply nearer than five hundred yards of the source of supply, nor in violation of the rules and regulations of the State Board of Health as authorized by this article. (1903, c. 159, s. 15; Rev., s. 3053; C. S., s. 7126.)

§ **130-119. Water supply of communities without sewerage systems.**—All schools, hamlets, villages, towns, or industrial settlements which are now located or may be hereafter located on the shed of any public water supply not provided with a sewerage system shall provide and maintain a reasonable system approved by the State Board of Health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Anyone refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (1903, c. 159, s. 14; Rev., ss. 3052, 3860; 1907, c. 585; 1911, c. 62, s. 35; C. S., s. 7127.)

When Injunction Granted. — An injunction will not be granted under this section except when it is shown that there are special damages, or that such conditions existed as to render the water unfit for the usage to which it was applied. Durham v. Eno Cotton Mills, 144 N. C. 705, 57 S. E. 465 (1907).

§ **130-120. Damage to private water supply misdemeanor.**—If any person shall willfully put into the well, spring, or cistern of water of any other person any substance or thing whereby such well, spring, or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor. (1850, c. 104; R. C., c. 34, s. 97; Code, s. 1114; Rev., s. 3456; C. S., s. 7128.)

Article 11.

State Housing Law.

§§ **130-121 to 130-146:** Repealed by Session Laws 1943, c. 55.

Article 12.

Privies.

§ **130-147. Privy defined.**—The term "privy" as used in this article shall be understood to include any and all buildings which are not connected with a system of sewerage, or with septic tanks of such construction and maintenance as approved by the State Board of Health and which are used for affording privacy in acts of urination or defecation. (1919, c. 71, s. 1; C. S., s. 7129.)

§ **130-148. Sewerage, septic tank or approved privy required, when.**—No person shall maintain or use a residence, located within three hundred yards of another residence, that is not provided with sewerage, or with septic tanks approved by the State Board of Health, or with a sanitary privy which complies in construction and maintenance with the requirements of this article: Provided, however, that nothing in this section shall curtail the right of a municipality to require and enforce immediate sewer connection. Provided, that plans and specifications for construction of privy buildings prescribed by the State Board of Health by authority of this article shall be construed as recommendatory but not mandatory as to exact size, architecture and dimensions of same: Provided, further, that privy buildings as used in the above last proviso shall not be construed to include any item pertaining to the exclusion of flies from excreta. (1919, c. 71, s. 2; C. S., s. 7130; Ex. Sess. 1921, c. 49, s. 2; 1927, c. 244.)

Editor's Note. — The 1927 amendment added the last two provisos.

§ **130-149. License form to be fastened on certain privies.**—The State Board of Health, through its officers and inspectors, shall fasten a license form on all privies within three hundred yards of the residence of any person other than that of the owner or tenant thereof during the last three calendar months of every year, when, on inspection, the said privy is approved by the officer making the inspection as constructed in a sanitary manner and to be in good repair, in accordance with reasonable rules and regulations to be prescribed by the State Board of Health for the sanitary construction and maintenance of privies. The license shall apply to the calendar year following its issuance, except as hereinafter provided. (1919, c. 71, s. 3; C. S., s. 7131.)

§ **130-150. Certain privies to be maintained in accordance with regulations.**—Every privy located within three hundred yards of the residence of any person other than that of the owner or tenant thereof shall be maintained in a sanitary manner and in accordance with reasonable rules and regulations to be prescribed by the State Board of Health and posted in suitable form inside of the privy by an officer of the said Board. (1919, c. 71, s. 4; C. S., s. 7132.)

§ **130-151. Responsibility for sanitary maintenance of privy.**—The head of a family or household, the proprietor of a boardinghouse, hotel, restaurant, or store, the principal or superintendent of a school, the agent or stationmaster of a railroad station or depot, or the person in charge of an office building, establishment, or institution, shall be responsible for the sanitary maintenance, as prescribed in § 130-150, of such privy or privies as may be used by his or her household, guests, customers, pupils, passengers, occupants, employees, workers or other persons. (1919, c. 71, s. 5; C. S., s. 7133.)

§ **130-152. Supervision of privies by Board of Health.** — The State Board of Health, through its officers and inspectors, shall exercise such supervision over the sanitary construction and maintenance of privies as may be necessary to enforce the provisions of this article. (1919, c. 71, s. 6; C. S., s. 7134.)

§ **130-153. Use of insanitary privies prohibited.**—If an officer or an inspector of the State Board of Health shall find a privy located within three hundred yards of the residence of a person other than that of the owner or tenant thereof which is not constructed in accordance with the provisions of § 130-149 of this article, he shall securely fasten on the said privy a notice reading, "Insanitary; unlawful to use"; and if the inspector or officer of the Board shall find, in the course of his inspection, a privy not being maintained in a sanitary manner and in accordance with the reasonable rules and regulations of the State Board of Health for the maintenance of privies, he shall remove the license from the privy and securely fasten on the privy a notice, reading, "Insanitary; unlawful to use." (1919, c. 71, s. 7; C. S., s. 7135.)

§ **130-154. Privy license not to be removed or defaced.**—No person shall remove or deface a privy license or other official notice fastened on or in a privy by an officer of the State Board of Health. (1919, c. 71, s. 8; C. S., s. 7136.)

§ **130-155. Violation of this article.**—Any person who violates any of the provisions of this article, and any person who is responsible for the sanitary maintenance of a privy, and who permits such privy after an official notice reading, "Insanitary; unlawful to use," has been fastened on it, to be used, shall be guilty of a misdemeanor and fined not less than five dollars nor more than fifty dollars or imprisoned not exceeding thirty days. (1919, c. 71, s. 9; C. S., s. 7137.)

§ **130-156. Bureau of sanitary engineering and inspection; duties.**—For the faithful execution of this article, the State Board of Health shall organize and maintain a bureau of sanitary engineering and inspection which shall (1) study, ascertain, and recommend for installation suitable types of privies for the variety of geologic, sociologic, and economic conditions found in the State of

North Carolina; (2) exercise such oversight over the construction and maintenance of privies coming within the meaning of this article as may be necessary for the protection of public health; (3) organize, supervise, and direct a force of sanitary inspectors who shall (a) inspect, license, and close privies in accordance with the provisions of this article and the rules and regulations of the State Board of Health, as provided for in this article; (b) make such other sanitary inspections as are required of the State Board of Health by law; (c) assist in the enforcement of the public health laws of the State, more especially the vital statistics law and the quarantine law; (d) collect samples of water from public water supplies for analyses by the State Laboratory of hygiene when such analyses are deemed necessary by the State Board of Health. (1919, c. 71, s. 11; C. S., s. 7139.)

§ **130-157. Powers of Board of Health and inspectors; penalty for interference.**—The members of the executive staff of the State Board of Health, and such additional State sanitary inspectors as shall be appointed for the enforcement of this article, are hereby authorized and are empowered to enter upon any premises and into any buildings or institutions for the purposes of inspection as provided for or required by State laws or regulations of the State Board of Health pursuant to such laws, but the privacy of no person shall be violated. Any person or persons who willfully interfere with or obstruct the officers of the State Board of Health in the discharge of any of the aforementioned duties shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment at the discretion of the court. (1919, c. 71, s. 12; C. S., s. 7140.)

When Judge May Direct Verdict. — In an indictment against one who is charged with willfully obstructing a sanitary inspector of the State Board of Health in the discharge of his duties, the trial judge may not direct a verdict, and it is only when uncontradicted evidence, if accepted as true, establishes the defendant's guilt that he may properly instruct the jury to return a verdict of guilty if they find the evidence to be true beyond a reasonable doubt. State v. Estes, 185 N. C. 752, 117 S. E. 581 (1923).

Mere words or opprobrious language with an expression of an intention to resist are not sufficient to sustain an indictment for willfully interfering with or obstructing an officer of the law in the performance of his duties, as prescribed by this section, unless spoken under circumstances which are calculated to deter an officer of ordinary courage and reasonable prudence in the discharge of his duty pertaining to his office, which raises an issue of fact for the jury to determine. State v. Estes, 185 N. C 752, 117 S. E. 581 (1923).

§ **130-158. Provisions of this article applicable to all privies on watersheds.**—The provisions of this article shall apply to all residences, institutions, and establishments, and all privies without regard to their distance from the homes of persons other than that of the owners or tenants thereof, which are located on the watershed of a public surface water supply. For the purpose of this article, the term "watershed" shall include the entire watershed of all streams, creeks, and rivers that have a daily average flow of less than ten million gallons, but for watersheds of streams, creeks or rivers that have a daily average flow of more than ten million gallons, the watershed shall include only such drainage areas as lie within fifteen miles of the waterworks intake. (1919, c. 71, s. 13; C. S., s. 7141.)

§ **130-159. Exceptions to provisions of this article.**—This article shall not apply to any city the population of which shall be in excess of twenty thousand according to the latest official estimates of the bureau of the census, if the authorities of such city, before October first, one thousand nine hundred and nineteen, shall officially request the State Board of Health to exempt it from its provisions. This article shall not apply to the residences of farmers and the homes of their tenants that are located more than one mile from the corporate limits of a town or city or the geographic center of a village. (1919, c. 71, s. 16; C. S., s. 7144; Ex. Sess. 1920, c. 71.)

Editor's Note. — The 1920 amendment rewrote the second sentence.

ARTICLE 13.

Used Plumbing Fixtures.

§ 130-160. Regulations for installation or sale of fixtures.—In order to prevent the spread of disease through the sale of unsanitary, inefficient or defective plumbing fixtures, and in order to promote the general health, it is hereby declared to be unlawful for any person, firm or corporation to sell or offer to sell, or install, or cause to be sold or installed, any secondhand or used bathroom fixtures, toilet fixtures or other plumbing fixtures until the same have been inspected and labeled in the manner hereinafter set forth, and unless at the time of such sale or installation it shall bear the label indicating that it has been inspected and approved by the State Board of Health. (1939, c. 324, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N. C. Law Rev. 330.

§ 130-161. Application for inspection of fixtures.—Any person, firm or corporation desiring to sell or install any secondhand or used bathroom fixtures, toilet fixtures or other plumbing fixtures, shall file with the State Board of Health, or some agent or representative thereof, on the form prescribed by the State Board of Health, an application for the inspection of the fixtures to be sold. Such application (among other things) shall contain a description and identification marks of each fixture and the sworn statement of the applicant as to the person, firm or corporation from whom said fixture was purchased, and as to the approximate date when the same was manufactured, and as to where and for how long the said fixture had been used prior to the date of such application. (1939, c. 324, s. 2.)

§ 130-162. Preparation of labels by State Board of Health.—The State Board of Health shall cause to be prepared labels in the form prescribed by the State Board of Health, stating (among other things) that the fixture is a secondhand or used fixture, and stating further that said fixture has been inspected and approved, and providing a blank for the date of such approval and a blank for the approximate date of the manufacture of the fixture. Such labels shall be assembled in books of one hundred; and such books shall be sold by the State Board of Health for the sum of twenty-five dollars ($25.00) per book. When a book has been so sold, the name of the person, firm or corporation buying the same shall be entered on the back thereof and the book shall be retained by the State Board of Health for use in labeling the fixtures or accessories of the purchaser. No application shall be received from any person, firm or corporation for a greater number of fixtures than the number of labels of the applicant held by the State Board of Health at the time of such application. (1939, c. 324, s. 3.)

§ 130-163. Inspection of fixtures by State Board; labeling of fixtures for resale.—Upon receiving an application for inspection, it shall be the duty of the State Board of Health, through such agents or representatives as shall be employed under the terms of this article, to inspect the fixtures referred to in the application, for the purpose of determining whether they can be resold and re-used without danger to public health. If the State Board of Health shall determine that any fixture can be used without danger to public health, it shall affix to each complete fixture a label of the applicant in the form prescribed in § 130-162 and shall insert in said label the date of approval and the approximate date of the manufacture of the fixture. (1939, c. 324, s. 4.)

§ **130-164. Proceeds from sale of labels to be used in administration of article.**—All proceeds received by the State Board of Health from the sale of the labels provided for in this article shall be used by the State Board of Health in the administration of this article; and the State Board of Health shall be under no duty to use any of its other funds for the administration of this article. (1939, c. 324, s. 5.)

§ **130-165. Construction of article.**—This article shall not be construed to prevent any person, firm or corporation from using or installing on his own premises fixtures which have theretofore been used on other premises of such person, firm or corporation. This article shall not apply to any person, firm or corporation not regularly engaged in the sale or installation of plumbing fixtures as a part of his or its business. (1939, c. 324, s. 6.)

§ **130-166. Violations made misdemeanor.**—Any person, firm or corporation who shall sell, offer for sale, install or cause to be sold or installed any used or secondhand bathroom fixtures, toilet fixtures or other plumbing fixtures except as provided in this article, or who shall violate any provision or requirement of this article, shall be guilty of a misdemeanor and upon conviction shall be fined the sum of one hundred dollars ($100.00) or imprisoned for not less than one nor more than three months. The sale of each separate fixture in violation of this article shall constitute a separate offense. (1939, c. 324, s. 7.)

§ **130-167. Counties exempt.**—Nothing contained in this article shall apply to the counties of Alexander, Alleghany, Anson, Ashe, Avery, Bertie, Bladen, Buncombe, Burke, Cabarrus, Carteret, Caswell, Chatham, Cherokee, Clay, Cleveland, Columbus, Cumberland, Dare, Davidson, Davie, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Henderson, Hyde, Jackson, Johnston, Jones, Macon, Madison, Martin, McDowell, Onslow, Pender, Perquimans, Polk, Randolph, Robeson, Rockingham, Sampson, Stanley, Stokes, Swain, Transylvania, Tyrrell, Union, Warren, Washington, Watauga and Wilkes. (1939, c. 324, s. 7½.)

Article 14.

Infectious Diseases Generally.

§ **130-168. Quarantine officers; election; term; vacancies.**—The county board of health in each county shall designate some person in each county to be county quarantine officer. The official term of service of a county quarantine officer, including those in office and serving on June first, one thousand nine hundred and seventeen, except in those counties where there is a county health officer, shall expire on the first Monday in January of the fourth year from the year of their appointment or election. In those counties having a county health officer who makes official oath or affirmation to enforce this article, the office of county quarantine officer shall be coterminous with the office of the said county health officer. The county board of health shall elect a successor to the county quarantine officer, or the county health officer acting as county quarantine officer, on or before the expiration of the term of service of said officer as herein defined. If the county quarantine officer, or the county health officer acting as such, is disqualified to continue in office by resignation, death, or otherwise, the county board of health shall, within five days thereafter, elect a county health officer or county quarantine officer to fill out the unexpired term. If the county board of health fails so to elect a successor to complete the unexpired term, the secretary of the North Carolina State Board of Health shall immediately appoint a county quarantine officer who shall make official oath or affirmation to enforce this article. (1917, c. 263, s. 2; C. S., s. 7146.)

§ **130-169. State Board of Health to be notified of election; officer**

to qualify.—The county board of health on electing a county quarantine officer shall promptly notify, in writing, the secretary of the North Carolina State Board of Health of such action, and failure to do so shall nullify the election. The officer-elect shall promptly notify the secretary of the North Carolina State Board of Health, in writing, of his having taken the oath or affirmation of office, inclosing a certified copy thereof, and failure to do so shall be construed as failure to have taken such official oath or affirmation. (1917, c. 263, s. 3; C. S., s. 7147.)

§ **130-170. Failure of officer to enforce article; penalty.**—Any county quarantine officer, or county health officer acting as county quarantine officer, who fails or refuses to enforce this article in his county shall be guilty of a misdemeanor, and, on conviction, fined not exceeding fifty dollars, and may, if the secretary of the North Carolina State Board of Health so decide, be disqualified for continuance in office. (1917, c. 263, s. 4; C. S., s. 7148.)

§ **130-171. Municipalities; how far included.**—This article shall not apply to incorporated towns and cities of the State having a population, according to the last decennial census, of ten thousand or over; nor shall it apply to those counties the sanitary administration of which is directed by a joint board of health presiding over both the county and a town or city having a population, according to the last federal decennial census, of ten thousand or more; but the system of quarantine in force in such cities and counties shall be approved by the North Carolina State Board of Health, and reports of the occurrence of contagious diseases therein shall be made to the North Carolina State Board of Health as from all other cities and counties in the State. (1917, c. 263, s. 5; C. S., s. 7149.)

§ **130-172. Compensation of quarantine officers.**—For his services the county quarantine officer shall be paid monthly, on certification from the secretary of the North Carolina State Board of Health that he has performed the duties of his office in a satisfactory manner, out of the county funds by the county treasurer, or in those counties that have no county treasurer by that official who performs the usual duties of the treasurer's office. The said certification and the sum paid the quarantine officer by the county authority shall be in accordance with a system of fees determined by the North Carolina State Board of Health for each item of work involved in the duties of the quarantine officer: Provided, however, that the total annual payment for any county shall not be in excess of the sum stated for such county classified according to population as follows:

	Per month.
Counties with a population less than 10,000	$15.00
Counties with a population of from 10,000 to 15,000	17.50
Counties with a population of from 15,000 to 25,000	25.00
Counties with a population of from 25,000 to 40,000	35.00
Counties with a population of from 40,000 to 50,000	45.00
Counties with a population over 50,000	50.00

In addition to such monthly salary, the county treasurer, or the person acting as county treasurer, shall pay to the quarantine officer all financial statements with receipted bills attached for sums paid out for postage registration of letters, and disinfectants, the total sum not to exceed ten dollars in any month nor one hundred dollars in any one year. The secretary of the North Carolina State Board of Health shall supply the county quarantine officer, without cost to the county, with all forms, placards, and literature necessary for carrying out the provisions of this article. County authorities may revise their understandings with those county physicians who are acting as both physicians to county charges and as quarantine officers, and whose terms of office as quarantine officer shall expire in January, one thousand nine hundred and twenty-one, unless discontinued by death, resignation, or other disqualification, on a basis of compensation adequate to the new duties herein required; but in no case shall the compensation allowed for the services required of quarantine officers be less than that herein named. (1917, c. 263, s. 6; C. S., s. 7150; 1921, c. 53.)

Editor's Note. — The 1921 amendment rewrote this section.

§ **130-173. Physicians to report preventable and infectious diseases.**—It shall be the duty of every physician to notify the county quarantine officer of the name, address, including the name of the school district, of any person living or residing, permanently or temporarily, in the county about whom such physician is consulted professionally and whom he has reason to suspect of being afflicted with whooping cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, typhus fever, Asiatic cholera, bubonic plague, yellow fever, or other disease declared by the North Carolina State Board of Health to be preventable, within twenty-four hours after obtaining reasonable evidence for believing that such person is so afflicted. If the afflicted person is a minor, the physician consulted professionally about him shall notify the county quarantine officer of the name and address of the parent or guardian of the minor in addition to the name, address, and school district of the minor himself. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C. S., s. 7151; 1921, c. 223, s. 1.)

Editor's Note. — The 1921 amendment substituted the words "or other disease declared by the North Carolina State Board of Health to be preventable" for the words "or other disease declared by the North Carolina State Board of Health to be infectious or contagious."

§ **130-174. Parents and householders to report.**—It shall be the duty of every parent, guardian, or householder in the order named to notify the county quarantine officer of the name, address, including the name of the school district, of any person in their family or household about whom no physician has been consulted but whom they have reason to suspect of being afflicted with whooping cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina State Board of Health to be preventable. (1917, c. 263, s. 8; C. S., s. 7152; 1921, c. 223, s. 2.)

Editor's Note. — The 1921 amendment substituted the word "preventable" at the end of the section for the words "infectious or contagious."

§ **130-175. Quarantine officers to report cases to State Board of Health.**—It shall be the duty of the county quarantine officer to report all cases of whooping cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina State Board of Health to be preventable, reported to him by physicians and parents, guardians, or householders, within twenty-four hours of the receipt of such report to the secretary of the North Carolina State Board of Health at Raleigh, and to make this report on forms supplied him by the secretary and in accordance with the rules and regulations adopted by the North Carolina State Board of Health. (1917, c. 263, s. 9; C. S., s. 7153; 1921, c. 223, s. 3.)

Editor's Note. — The 1921 amendment substituted the words "declared by the North Carolina State Board of Health to be preventable" for the words "declared by the North Carolina State Board of Health to be infectious or contagious."

§ **130-176. Rules of State Board of Health; rules of local authorities.**—The North Carolina State Board of Health shall adopt what in their judgment seems to be the necessary rules and regulations governing the management, supervision, or control of the diseases coming within the meaning of this article, and shall cause the rules and regulations adopted to be published in the North Carolina State Board of Health bulletin and to be supplied in suitable quantities to all concerned with the execution of this article, and the North Carolina State Board of Health shall revise such rules and regulations from time to time to adjust their requirements to new discoveries and improved methods for dealing with the sources and modes of infection of the diseases specified. The rules and regulations so adopted shall be regarded as the minimum requirements, and the authorities of any county, town, or city may adopt such additional rules and regulations for the control of the diseases mentioned in this article, and pay such additional fees and salaries as in their judgment seem necessary. (1917, c. 263, s. 10; C. S., s. 7154.)

§ **130-177. Violation of article or rules misdemeanor.**—Any person willfully violating any of the provisions of this article and any person violating any of the rules and regulations adopted by the North Carolina State Board of Health, as provided in the preceding section, shall, in the absence of specific provisions in other sections of this article, be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not more than thirty days, at the discretion of the court. In case the offender be stricken with the disease for which he is quarantinable, he shall be subject to the penalty on recovery, unless in the opinion of the secretary of the North Carolina State Board of Health the penalty should be omitted. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 11; C. S., s. 7155.)

§ **130-178. Bureau of Epidemiology; State Epidemiologist.**—For the purpose of seeing that this article and the rules and regulations adopted by the North Carolina State Board of Health, as provided in this article, are faithfully executed, a Bureau of Epidemiology and the office of State Epidemiologist is hereby created. The aforesaid Bureau and the State Epidemiologist shall be under the control and supervision of the North Carolina State Board of Health. (1917, c. 263, s. 12; C. S., s. 7156.)

§ **130-179. Disposal of bowel discharges in typhoid and cholera; penalties.**—Any householder in whose family there is to his knowledge a person sick of cholera or typhoid fever, who shall permit the bowel discharges of such sick person to be emptied without first having disinfected them according to instructions to be obtained from the attending physician or county superintendent of health, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two nor more than twenty-five dollars, or imprisoned not less than ten nor more than thirty days. In cases where such undisinfected discharges are emptied on the watershed of any stream or pond furnishing the source of water supply for any public institution, city, or town, the penalty shall be a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment for not more than thirty days. And any physician attending a case of cholera or typhoid fever who refuses or neglects to give the proper instructions for such disinfection as soon as the diagnosis is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars.

During an epidemic of cholera all common carriers shall so arrange their water closets as to catch in water-tight receptacles the dejections of all persons using the same, and shall disinfect the said dejections in a manner satisfactory to the State Board of Health before emptying them. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C. S., s. 7158.)

§ **130-180. Travel of infected persons regulated; inspectors; penalty.**—The county or municipal boards of health in counties, cities, or towns near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travelers may pass from infected places in other states, who may examine such travelers as may be suspected of bringing any infection dangerous to the public health, and, if need be, may restrain them from traveling until licensed thereto by the quarantine officer or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such infected place who, without such license, travels within this State, except to return by the most direct route to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall be isolated or ejected, at the discretion of the quarantine officer or of the municipal health authorities last mentioned. And all common carriers bringing into this State any such persons as named above are hereby required to return them to some point without this State, if required by the quarantine officer or municipal health authorities above specified; and upon refusal to comply with the regulations of such boards of health or municipal health authorities upon this subject, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or imprisoned not more than thirty days. Nothing in this section shall prevent the State Board of Health in time of epidemics from appointing such additional examiners as they may deem necessary to the preservation of the public health. (1893, c. 214, s. 15; 1901, c. 245, s. 6; Rev., ss. 3454, 4506; C. S., s. 7159.)

§ **130-181. Quarantine of infected travelers.**—When a person comes to a city or town from abroad or from some other place in this State which is infected or has lately been infected with either of the diseases specified in this article or other disease declared by the North Carolina State Board of Health to be infectious or contagious, the quarantine officer or lawful municipal authority specified in this article shall make effective provision in the manner deemed best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself or his parents, where able, otherwise at the charge of the city, town, or county to which he belongs. (1893, c. 214, s. 14; 1901, c. 245, s. 5; Rev., s. 4507; C. S., s. 7160.)

§ **130-182. Transportation of bodies of persons dying of infectious diseases.** — No railroad corporation or other common carrier or persons shall convey or cause to be conveyed through or from any city, town, or county in this State the remains of any person who has died of smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever, or cholera until such body has been disinfected and encased in such manner as shall be directed by the State Board of Health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk, or health officer or any other person shall give a permit for the removal of such body until he has received from the local board of health or other proper health authorities of the city, town, or county where the death occurred a certificate stating the cause of death and that the said body has been prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists. (1893, c. 214, s. 16; Rev., s. 4459; C. S., s. 7161.)

ARTICLE 15.

Smallpox.

§ **130-183. Immunization against smallpox.**—(1) All children in North Carolina are required to be immunized against smallpox before attending any public, private, or parochial school.

(2) A parent, guardian, or person in loco parentis, of any such child not

previously immunized, shall present the child to a physician licensed in North Carolina and request the physician to administer the necessary vaccine for immunization against smallpox.

(3) If the person is unable to pay for the services of a private physician, the child may be taken to the county health officer or county physician of the county in which the child resides where such service shall be provided free.

(4) The physician administering the smallpox vaccine shall submit a certificate to the local health or quarantine officer and give a copy to the parent, guardian, or person in loco parentis, of the child. Forms for the certificate shall be supplied by the State Board of Health.

(5) No principal or teacher shall permit any child to enter a public, private or parochial school without the certificate provided for in subsection (4), or some other acceptable evidence of immunization against smallpox; provided this section shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them.

(6) If any physician licensed in North Carolina certifies that such vaccination is detrimental to a child's health, the requirements of this section shall be inapplicable until such vaccination is found no longer to be detrimental.

(7) The willful violation of any part of this section is a misdemeanor punishable by a fine of not more than fifty dollars or by imprisonment for not more than thirty days in the discretion of the court. (1911, c. 62, s. 23; 1913, c. 181, s. 11; C. S., s. 7162; 1945, c. 495.)

Editor's Note. — The 1945 amendment rewrote this section.

Prior to this section, under a regulation providing for vaccination of all the inhabitants of a town the school children were subject to vaccination the same as other persons in the town. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149 (1907).

And where a school board had entire and exclusive control of the public schools, it could require vaccination as a prerequisite to attendance. Hutchins v. School Committee, 137 N. C. 68, 49 S. E. 46 (1904).

§ 130-184. Free vaccination.—On the appearance of a case of smallpox in any neighborhood due warning of the existence of the disease shall be given, and all persons not able to pay shall be vaccinated free of charge by the county physician or health officer or by the municipal physician or health officer, and the county physician or health officer shall vaccinate every person admitted into a public institution, jail, or county home as soon as practicable, unless he is satisfied, upon examination, that the person is already successfully vaccinated; the money for vaccine to be furnished by the county commissioners. (Rev., s. 4451; 1913, c. 181, s. 12; C. S., s. 7163.)

Constitutional. — There is no provision of the Constitution which forbids the legislature to enact laws for the preservation of the health of the inhabitants of the State, and it is indeed an exercise of that governmental police power to legislate for the public welfare which is inherent in the General Assembly, except when restrained by some express constitutional provision. State v. Hay, 126 N. C. 999, 35 S. E. 459 (1900).

Under the former wording of this section which authorized the sanitary committee of a county to make regulations and provisions for the vaccination of its inhabitants, it was held that such regulations, when reasonable and relevant to the purpose, were a valid exercise of authority. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149 (1907).

Arrest of Persons Exposed. — A city is not liable to one arrested on the ground of having been exposed to smallpox, where the officers act without malice. Levin v. Burlington, 129 N. C. 184, 39 S. E. 822 (1901).

§ 130-185. Rules as to vaccination; violations punished.—The board of health of any city, town, or county may make such regulations and provisions for the vaccination of the inhabitants of their city, town, or county, and impose such penalties as they may deem necessary to protect the public health, and the violations of such rules shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (Rev., s. 3455; 1913, c. 181, s. 12; C. S., s. 7164.)

Cross Reference. — See note to preceding section.

Punishment Valid. — The punishment provided for by this section when administered for the violation of a reasonable regulation, is a valid exercise of authority. Morgan v. Stewart, 144 N. C. 424, 57 S. E. 149 (1907).

When Vaccination Would Be Dangerous.—The general law embraces all, leaving it optional to no one's private judgment whether to render compliance or not. If there are exceptional cases, where owing to the peculiar state of the health or system, vaccination would be dangerous, that would be a matter of defense, the burden of which would be on the defendant, and a fact to be found by the jury. State v. Hay, 126 N. C. 999, 35 S. E. 459 (1900).

Cited in 1 N. C. Law Review in discussion of legislative power to penalize violation of administrative rule.

Article 16.

Diphtheria.

§ **130-186. Antitoxin furnished to indigents.**—The State Board of Health is hereby authorized and directed to arrange for a sufficient supply of diphtheria antitoxin for the treatment therewith, free of charge, of indigent persons sick of diphtheria, and for immunizing against infection such indigent persons as may be exposed to the disease, and to extend the facilities for making the diagnosis of the disease. (1909, c. 389, s. 1; C. S., s. 7165.)

§ **130-187. Laboratory of Hygiene to furnish antitoxin to counties.**—The Board of Health shall keep on hand in the State Laboratory of Hygiene a supply of reliable diphtheria antitoxin, and shall distribute it, through the said laboratory, to the several counties of the State, whenever the boards of county commissioners thereof shall request it, and shall notify the secretary of the State Board of Health that they will pay for the same upon presentation of a bill, and shall designate the person or persons with whom it shall be deposited. The antitoxin shall be furnished at the lowest figure obtainable for a reliable preparation. (1909, c. 389, s. 2; C. S., s. 7166.)

§ **130-188. Physician's requisitions for antitoxin.**—Whenever a physician is called to a case of diphtheria in an indigent person or one in immediate need and unable to pay for antitoxin, he may obtain the same from one of the depositories or diphtheria stations by filling out and signing in duplicate the blank requisition form to be supplied with the antitoxin by the said Board of Health, and presenting the same to the county health officer or county physician or any member of the county board of health, or to such person as the said county board of health may appoint, who, after satisfying himself as to the indigency of the person or persons for whom the antitoxin is intended, shall approve and countersign in duplicate the requisition. The person dispensing the antitoxin shall retain one copy of the requisition and shall mail the duplicate promptly to the director of the Laboratory of Hygiene. He shall also return to the said director all packages of antitoxin in his possession as soon as they become out of date. (1909, c. 389, s. 3; C. S., s. 7167.)

§ **130-189. Article applicable to cities and towns.**—The provisions of §§ 130-186 to 130-190 shall apply to cities and towns upon the same conditions as they do to counties. (1909, c. 389, s. 4; C. S., s. 7168.)

§ **130-190. Immunization of children.**—The parent or parents or guardian of any child in North Carolina shall have administered to such child between the ages of six months and twelve months an immunizing dose of a prophylactic diphtheria agent which meets the standard approved by the United States Public Health Service for such biologic products.

It shall be incumbent upon the parent or parents or guardian of such child to present said child to a regularly licensed physician in the State of North Carolina, of his or her or their own choice, and request said physician to render this professional service. If the said parent or parents or guardian of such child are unable to pay for the services of a private physician of his or her or their own choice, they shall then present such child to the county health officer in the county in which such child resides and ask that an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States Public Health Service for such biologic products, be administered, and such county health officer shall administer such treatment.

If there is no regularly employed health officer in the given county in which the indigent parent or parents or guardian referred to in the third paragraph of this section resides, the parent or parents or guardian of the indigent child shall present such child to the county physician, who shall then administer the prophylactic diphtheria agent or secure the services of another regularly licensed physician in such county and pay such physician for such services to the said indigent child out of such funds of said county as are provided for such purposes.

The physician administering the prophylactic diphtheria agent shall submit a certificate to the local health or quarantine officer, and give a copy to the parent, guardian, or person in loco parentis, of the child. Furthermore, no principal or teacher shall permit any child to enter a public, private, or parochial school without this certificate or some other acceptable evidence of immunization against diphtheria; provided this section shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them.

Any willful violation of this section, or any part thereof, shall constitute a misdemeanor and shall be punishable at law by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than thirty (30) days, in the discretion of the court. Provided this section shall not apply to children whose parent or parents or guardians are bona fide members of a religious organization whose teachings are contrary to the practices herein required, and no certificates for admission to any public, private or parochial school shall be required as to them. (1939, c. 126; 1945, c. 494; 1951, c. 137.)

Editor's Note. — For comment on this enactment, see 17 N. C. Law Rev. 360.

The 1945 amendment rewrote the fourth paragraph, and the 1951 amendment struck out a former provision relating to children between the ages of twelve months and five years.

Article 16A.

Whooping Cough.

§ **130-190.1. Immunization against whooping cough.**—(1) Required for Young Children.—All children in North Carolina are required to be immunized against whooping cough before reaching the age of one year.

(2) Procedure.—A parent, guardian, or person in loco parentis, of any such child not previously immunized, shall present the child to a physician licensed in North Carolina and request the physician to administer to such child a sufficient dosage of a prophylactic whooping cough agent. All whooping cough prophylactic agents used in compliance with this section must meet the standards required by the State Board of Health.

(3) Free Services for Needy Persons.—If the person is unable to pay for the services of a private physician, or for the prophylactic agent, the child may be taken to the county health officer or county physician of the county in which the child resides where such prophylactic agent shall be provided and administered

free. The county appropriating body shall make available sufficient funds for the purchase of such immunizing agent for such cases.

(4) Certificate of Immunization.—The physician administering the whooping cough dosage shall submit a certificate to the local health or quarantine officer and give a copy to the parent, guardian, or person in loco parentis, of the child. Forms for the certificate shall be supplied by the State Board of Health.

(5) Prohibiting Nonimmunized Children from Attending School.—No principal or teacher shall permit any child to enter a public, private or parochial school without the certificate provided for in subsection (4), or some other acceptable evidence of immunization against whooping cough.

(6) Dosage Detrimental to Health.—If any physician, licensed to practice in North Carolina, certifies that such dosage is detrimental to a child's health, the requirements of this section shall be inapplicable until such dosage is found no longer to be detrimental.

(7) Violation a Misdemeanor; Exceptions.—The willful violation of any part of this section is a misdemeanor punishable by a fine of not more than fifty dollars or by imprisonment for not more than thirty days in the discretion of the court; provided this section shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private or parochial school shall be required as to them. (1945, c. 528.)

ARTICLE 17.

Hydrophobia.

§ **130-191. Board of Health to provide treatment.**—The State Board of Health is hereby authorized and empowered to provide for and have conducted under its direction the preventive treatment of hydrophobia or rabies, whenever in its judgment circumstances, financial and other, will justify it. To meet the expenses of this treatment the said Board is hereby given authority to supplement the revenue derived from the fees for the treatment by such sums from the treasury of the State Laboratory of Hygiene as may be necessary: Provided, that the usefulness and efficiency of the said laboratory is not thereby impaired. (1907, c. 891, s. 1; C. S., s. 7170.)

§ **130-192. Treatment to be without charge.**—The benefits of said treatment shall be given free of charge to all residents of the State who shall present to the secretary of the State Board of Health or its representative having in charge the management of this special work, an affidavit of inability to pay, duly sworn to and subscribed before a justice of the peace, or, if the case be a minor, such an affidavit by the parent or guardian. To meet as far as may be the expenses of this special work the said State Board of Health is hereby authorized and directed to demand from those able to do so the payment in advance of a reasonable fee, not to exceed in any case the usual charge made by the reputable Pasteur institutes of this country. (1907, c. 891, s. 2; C. S., s. 7171.)

ARTICLE 18.

Inflammation of Eyes of Newborn.

§ **130-193. Ophthalmia neonatorum described.**—Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (ophthalmia neonatorum). (1917, c. 257, s. 1; C. S., s. 7180.)

§ 130-194. Inflammation of eyes of newborn to be reported.—It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, parent, relative, and any persons attendant on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth or any time within two weeks after childbirth, knowing the condition, hereinabove defined, to exist, immediately to report such fact, as the State Board of Health shall direct, to the local health officer of the county, city, town, village, or whatever other political division there may be within which the infant or the mother of any such infant may reside. For such services the attending physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital shall receive from the State Treasurer a fee of fifty cents. In the event of there being no health officer in the city, village, or town in which the infant resides, midwives shall immediately report the condition to some qualified practitioner of medicine, and thereupon withdraw from the case, except as she may act under a physician's instructions. On receipt of such receipt, the health officer, or the physician notified by a midwife where no health officer exists, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the said county, city, village, or town. (1917, c. 257, s. 2; C. S., s. 7181.)

Editor's Note. — The word "receipt" the second time it appears in the last sentence of this section undoubtedly should read "report", but it has appeared as "receipt" ever since the enactment of the Consolidated Statutes.

§ 130-195. Eyes of newborn to be treated; penalty for omission.—It shall be unlawful for any physician or midwife practicing midwifery in the State of North Carolina to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, two drops of a solution prescribed or furnished by the State Board of Health. (1917, c. 257, s. 3; C. S., s. 7182.)

Duty of Physician. — This section does not impose upon the physician attempting in good faith to obey the statute the absolute duty of ascertaining the percentage of the solution furnished by a hospital for this purpose, and he is not liable for damages resulting from the use of a larger per cent of such solution when so furnished by the hospital. Covington v. Wyatt, 196 N. C. 367, 145 S. E. 673 (1928).

§ 130-196. Duties of local health officer.—It shall be the duty of the local health officer:

1. To investigate or to have investigated each case as filed with him in pursuance with the law, and any other such cases as may come to his attention.
2. To report all cases of inflammation of the eyes of the newborn and the result of all such investigations as the State Board of Health shall direct.
3. To conform to such other rules and regulations as the State Board of Health shall promulgate for his further guidance. (1917, c. 257, s. 4; C. S., s. 7183.)

§ 130-197. Duties of State Board of Health.—It shall be the duty of the North Carolina State Board of Health:

1. To enforce the provisions of this article.
2. To promulgate such rules and regulations as shall, under this article, be necessary for the purposes of this article, and such as the State Board of Health may deem necessary for the further and proper guidance of local health officers.
3. To provide for the gratuitous distribution of the scientific prophylactic for inflammation of the eyes of the newborn, as designated in § 130-195, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

4. To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn, and the necessity for prompt and effective treatment.

5. To furnish copies of this law to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

6. To keep a proper record of any and all cases of inflammation of the eyes of the newborn as shall be filed in the office of the State Board of Health in pursuance with this law and as may come to their attention in any way, and to constitute such records a part of the biennial report to the Governor and the legislature. (1917, c. 257, s. 5; C. S., s. 7184.)

§ **130-198. Treatment in hospitals and institutions.**—It shall be the duty of physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant's eyes, within two hours after birth, to use the prophylactic against inflammation of the eyes of the newborn specified in this article, and to make record of the prophylactic used. It shall also be the duty of such institution to maintain such records of cases of inflammation of the eyes of the newborn as the State Board of Health shall direct. (1917, c. 257, s. 6; C. S., s. 7185.)

§ **130-199. Violations of article; penalties.**—Whoever being a physician, surgeon, midwife, obstetrician, nurse, manager, or person in charge of a maternity home or hospital, parent, relative, or person attendant upon or assisting at the birth of any infant, violates any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in a sum not less than ten dollars nor more than fifty dollars, and, if possessed of the required amount of property, subject to suit by the parent or guardian of the children for damages resulting to the child; and if such a suit shall be brought the establishment of the fact that the physician or midwife did not place the drops in the child's eyes within two hours of its birth shall be accepted as prima facie evidence of the physician's or midwife's responsibility for the injury of the disease to the eye or eyes of the child. It shall be the duty of the prosecuting attorney to prosecute all violations of this article. (1917, c. 257, s. 7; C. S., s. 7186.)

§ **130-200. Registration of midwives.**—All midwives who now practice midwifery in North Carolina, other than regularly registered physicians, shall register, without fee, their names and addresses with the secretary of the North Carolina State Board of Health on or before the first day of July, one thousand nine hundred and seventeen, in order that the prophylactic solution and necessary instructions may be furnished them. After the aforesaid date no person, physician, or midwife shall practice midwifery in North Carolina until at least ten days have elapsed following the registration of the name and address of the person who intends to engage in the practice of midwifery, and in this period of ten days elapsing between the registration and beginning of the practice of midwifery by the registered person the State Board of Health shall furnish the necessary directions and solution to the physician or midwife for compliance with this article. (1917, c. 257, s. 8; C. S., s. 7187.)

§ **130-201. Failure to register; penalty.** — Any physician or midwife failing to register their names and addresses with the North Carolina State Board of Health as required in the preceding section shall be guilty of a misdemeanor and subject to a fine of from ten dollars to fifty dollars. (1917, c. 257, s. 9; C. S., s. 7188.)

§ **130-202. Expenses of prosecution.** — Any and all necessary and legitimate expenses that may be incurred in prosecuting a case under this article shall, on proper showing, be met by the State Board of Health. (1917, c. 257, s. 10; C. S., s. 7189.)

§ **130-203. Copies of article to be distributed.**—Every health officer shall furnish a copy of this article to each person who is known to him to act as midwife or nurse in the county, city, or town for which such health officer is appointed, and the Secretary of State shall cause a sufficient number of copies of this article to be printed and supply the same to the health officer of the county, city, or town, and the State Board of Health, on application. (1917, c. 257, s. 11; C. S., s. 7190.)

Article 19.

Venereal Diseases.

Part 1. Control and Treatment.

§ **130-204. Venereal infection.**—Syphilis, gonorrhea, and chancroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for anyone infected with these diseases or any of them to expose another person to infection. (1919, c. 206, s. 1; C. S., s. 7191.)

§ **130-205. Physicians and superintendents of institutions to report cases.**—Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a case of venereal disease, shall make a report of such case to the health authorities according to such form and manner as the North Carolina State Board of Health shall direct. (1919, c. 206, s. 2; C. S., s. 7192.)

§ **130-206. Sources of infection investigated; suspected persons examined.**—State, county, and municipal health officers, or their authorized deputies, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known; to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local and State health officers to investigate sources of infection of venereal disease, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution. Provided, that no examination of any person for venereal diseases under this section shall be made by anyone except a licensed physician. (1919, c. 206, s. 3; C. S., s. 7193; 1925, c. 217, s. 1.)

Editor's Note. — The 1925 amendment added the proviso at the end of the section.

§ **130-207. Prisoners examined and treated; isolation of patients.**—All persons who shall be confined or imprisoned in any State, county, or city prison in the State shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any State, county, or city prison are directed to make available to the health authorities such portion of any State, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be so isolated or quarantined under the provisions of the first preceding section, shall be isolated and treated at public expense until cured; or, in lieu of such isolation, any of such persons may, in the discretion of the North Carolina State Board of Health, be required to report for treatment to a licensed physician or submit to treatment provided at public expense as provided in § 130-206. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Provided, that no examination of any person for venereal disease under this section shall be made by anyone except a licensed physician. (1919, c. 206, s. 4; C. S., s. 7194; 1925, c. 217, s. 2.)

Editor's Note. — The 1925 amendment added the proviso at the end of the section.

§ **130-208. Treatment of prisoners infected with communicable venereal disease required before release.**—Whenever any person shall be confined or imprisoned in any State, county, or city prison in this State and, upon examination provided in § 130-207, such person has been found to be infected by a communicable venereal disease by the county health officer or other licensed physician authorized by law to make the said examination, the said person shall not be set at liberty until treated for the said disease in accordance with the provisions of the said section, unless such person shall give a bond with surety satisfactory to the clerk of the superior court of the county where he is imprisoned, conditioned upon his making his personal appearance at a stated time and place before the county health officer, and to submit to such examinations as may be proper in the case, and to satisfy said officer that he is undergoing, or has undergone, satisfactory treatment for his said disease.

Upon the giving of the said bond, such person shall, from time to time, as required by the county health officer, personally appear before him for examination, and when, in the judgment of the said health officer, the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said person from further attendance and examination shall be made by the clerk of superior court, upon certificate of the aforesaid health officer or other physician authorized to make the examination. (1937, c. 230.)

§ **130-209. Board of Health may make rules and regulations to enforce this article.**—The North Carolina State Board of Health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this article, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of § 130-206, and such other rules and regulations, not in conflict with provisions of this article, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this article, and shall have the force and effect of law. (1919, c. 206, s. 5; C. S., s. 7195.)

§ **130-210. Expenses authorized.**—The North Carolina State Board of Health, through its officers, are hereby empowered and authorized to incur such expenses in the examination, detention, quarantine, and treatment of persons suspected of having, or having, venereal diseases as in their judgment is necessary. (1919, c. 206, s. 6; C. S., s. 7196.)

§ **130-211. Statements of expenses to county commissioners; payment of expenses.**—The North Carolina State Board of Health shall submit to the county commissioners of the county in which persons suspected of having, or having, venereal diseases are suspected of having spread the disease, an itemized statement of expenses incurred in the examination, detention, quarantine, or treatment of such persons, and the county commissioners shall, within thirty days after the receipt of such statement of expenses, pay to the treasurer of the North Carolina State Board of Health a sum equal to that expended. (1919, c. 206, s. 7; C. S., s. 7197.)

§ **130-212. Violation of this article or authority pursuant thereto a misdemeanor.**—Any person who shall violate any of the provisions of part one of this article or any lawful rule or regulation made by the North Carolina State Board of Health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any State, county, or municipal health officer, pursuant to the authority granted in this article, shall be deemed guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court. (1919, c. 206, s. 8; C. S., s. 7198; 1943, c. 734.)

Editor's Note.—Prior to the 1943 amendment the latter part of this section read "and shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00), or by imprisonment for not more than thirty days."

Part 2. Prescriptions and Reports.

§ **130-213. Treatment except by physician unlawful.**—It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease. (1919, c. 214, s. 1; C. S., s. 7199.)

§ **130-214. Patented and proprietary remedies; druggists to report sales of.**—Any druggist or other person who sells at retail any patented, proprietary, or trademark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhea, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethal injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina State Board of Health the sale of such remedies or alleged remedies to the Bureau of Venereal Diseases of the North Carolina State Board of Health. (1919, c. 214, s. 2; C. S., s. 7200.)

§ **130-215. Obtaining prescription or remedy under false name a misdemeanor.**—Any person who, in obtaining a prescription from a physician under § 130-213, or in obtaining drugs or remedies mentioned in § 130-214, gives a false or assumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in § 130-220. (1919, c. 214, s. 3; C. S., s. 7201.)

§ **130-216. Quarantine officer may appoint physicians as agents to issue prescriptions.**—For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina State Board of Health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases. (1919, c. 214, s. 4; C. S., s. 7202.)

§ **130-217. Fees of quarantine officer and agents.**—A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the State laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina State Board of Health, shall be entitled to a fee of fifty cents, twenty-five cents of which shall be paid by the Bureau of Venereal Diseases of the North Carolina State Board of Health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the Bureau of Venereal Diseases of the North Carolina State Board of Health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent: Provided, that the municipal authorities shall pay the above amount for prescriptions issued by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription. (1919, c. 214, s. 5; C. S., s. 7203.)

§ **130-218. Druggists to keep record of prescriptions; subject to inspection.**—Any and all prescriptions for venereal diseases (gonorrhea, syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies, or alleged remedies mentioned in § 130-214, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina State Board of Health. (1919, c. 214, s. 6; C. S., s. 7204.)

§ **130-219. Purchaser of remedies may be examined.**—The State health officer or his deputy or agent may require any purchaser of remedies or alleged remedies designated in § 130-214, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease. (1919, c. 214, s. 7; C. S., s. 7205.)

§ **130-220. Violation of this article a misdemeanor.**—Any person violating any of the provisions of part two of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days. (1919, c. 214, s. 8; C. S., s. 7206.)

Part 3. Prospective Mothers.

§ **130-221. Wassermann test required of prospective mothers.**—Every woman who becomes pregnant shall have a blood sample taken and submitted to a laboratory approved by the North Carolina State Board of Health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N. C. Law Rev. 359.

§ **130-222. Services of duly licensed physician upon request; reference of cases thereto.**—Any duly licensed physician shall, upon the request of said woman, secure or cause to be secured a sample of blood and submit said sample to a laboratory approved by the State Board of Health for performing the Wassermann test or other approved tests for syphilis.

Such persons as are permitted by law to attend a woman during the period of her gestation and at childbirth but not permitted by law to take such blood samples shall, upon the request of said patient, refer such patient to a duly licensed physician who, in turn, shall take or cause to be taken such blood sample and submit same to a laboratory approved by the State Board of Health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 2.)

§ **130-223. Services of health officer or county physician available.**—Any woman who is pregnant and who is unable to pay a duly licensed physician to take a blood sample for testing, as is required in part three of this article, may have such blood sample secured by the local county health officer or county physician and submitted to a laboratory approved by the State Board of Health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 3.)

§ 130-224. Birth certificates to contain information as to tests.—In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed. If such test has been made during pregnancy, those required to report births and stillbirths shall state the date on which the test was made. In addition to the usual information asked for on each certificate of birth, the supplementary confidential medical tab shall be filled out on each birth certificate. Every certificate of birth shall state whether a sereological test for syphilis was made during pregnancy or at delivery. (1939, c. 313, s. 4.)

§ 130-225. Penalty for violation.—Any knowing and willful violation of part three of this article, or any part thereof, by any physician, attending midwife, county health officer or county physician charged herein with the responsibility of its enforcement, shall be declared a misdemeanor and shall be punishable by a fine of twenty-five dollars ($25.00) or imprisonment for thirty days, or both, in the discretion of the court. (1939, c. 313, s. 6.)

Article 19A.

Prevention of Spread of Tuberculosis.

§ 130-225.1. Health officer to cause suspects to be examined.—When any health officer shall have reasonable grounds to believe that any person has tuberculosis in an active stage or in a communicable form, and who will not voluntarily seek a medical examination, then it shall be the duty of such health officer to order such person, either orally or in writing, to undergo an examination by a physician qualified in chest diseases or at some State or county sanatorium for tuberculosis or at some clinic or hospital approved by the North Carolina State Board of Health for such examinations. The health officer and the person suspected of having tuberculosis shall, if possible, agree upon the time and place of examination, but if no satisfactory time and place can be arranged by agreement, then the health officer shall fix a reasonable time and place for such examination, and it shall be the duty of such suspected person to present himself or herself for examination at such time and place as ordered by the health officer. The examination shall include an X-ray of the chest, a sufficient number of microscopical examinations of sputum, and such other forms and types of examinations as shall be approved by the North Carolina State Board of Health. If, upon such examination, it shall be determined that such person has tuberculosis in an active stage or in a communicable form, then it shall be the duty of such tuberculous person, as soon as he or she can reasonably do so, to arrange for admission of himself or herself as a patient in one of the State sanatoriums for tuberculosis, or in one of the county sanatoriums for tuberculosis or in some private hospital or in the ward of a private hospital maintained and operated for the treatment of tuberculous patients, or when there is no danger to the public or to other individuals as determined by the health officer, he or she may receive treatment at home. (1943, c. 357; 1945, c. 583; 1951, c. 448.)

Editor's Note. — The 1951 amendment rewrote this article which formerly related only to the punishment for failure to comply with instructions of agent of local board of health.

For comment on this section, see 21 N. C. Law Rev. 353.

§ 130-225.2. Precautions necessary pending admission to the hospital. — Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in any State sanatorium for tuberculosis, county sanatorium for tuberculosis or in any private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the county health officer to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health officer shall investigate from time to time for the purpose of seeing if said instructions are being carried out in a reasonable and acceptable manner. Any person shall be guilty of a misdemeanor who shall willfully fail to do any of the following acts:

(a) Willfully fail and refuse to present himself or herself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as ordered by the health officer or at such time and place agreed upon between such suspected person and the health officer.

(b) Willfully fail and refuse to present himself or herself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health officer to be necessary for the prevention of spread of the disease, in accordance with the provisions of § 130-225.1.

(c) Willfully fail or refuse to follow the instructions of the health officer as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in paragraphs (b) and (c) immediately above or shall enter a plea of guilty thereto when charged with such violations, then such person shall be imprisoned in the prison department of the North Carolina sanatorium or if the defendant is a female, such female shall be imprisoned in the hospital section of the woman's division of the State's prison until provision is made for caring for female prisoners at the North Carolina sanatorium. The period of imprisonment shall be for a period of two years. The medical superintendent of the State sanatorium, upon signing and placing among the permanent records of the North Carolina sanatorium a statement to the effect that such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health officer serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Highway and Public Works Commission. The court may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium and shall remain there until discharged by the medical superintendent or controlling authority of any county sanatorium. The medical superintendent of the North Carolina sanatorium, with the advice and consent of the Commissioner of Paroles, where he finds in an occasional and rare instance that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty (60) days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to the central or main sanatorium, and the medical superintendent shall be responsible for his care and custody. The medical superintendent of any State sanatorium or the medical superintendent or controlling authority of any county sanatorium is hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States government or to the representative or agent of such veterans bureau or other department or bureau of said government any inmate or convicted tuberculous person, being soldiers or sailors or other members of the armed forces who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said prison division or who may be admitted to any State sanatorium or county sanatorium. (1943, c. 357; 1945, c. 583; 1951, c. 448.)

Article 20.

Tubercular Prisoners.

Part 1. Segregation of Tubercular Prisoners.

§ 130-226. Tuberculous county prisoners to be segregated.—The board of county commissioners of the respective counties of North Carolina shall provide in the jailhouse or in any camp or place where prisoners are committed for keeping or sentenced to a term of imprisonment in any county in the State of North Carolina, separate cells or rooms or a place in which shall be confined any prisoner or prisoners who may be committed for keeping or sentenced to said prison or place of confinement for a term of imprisonment, who have been examined by the county physician or county health officer and pronounced to be affected with tuberculosis. (1907, c. 567, s. 1; C. S., s. 7207.)

§ 130-227. Sheriff to have prisoners suspected to be tuberculous examined and separated.—When a prisoner is placed in the custody of a sheriff for the purpose of being committed to jail or to any place where prisoners are kept, and the sheriff has reason to believe or suspect that the prisoner is suffering with tuberculosis, it shall be the duty of the sheriff to have such prisoner examined by the county physician or county health officer, and if upon examination the prisoner is pronounced tubercular, then he shall be separated from other prisoners and confined in a separate cell or other place of confinement. (1907, c. 567, s. 2; C. S., s. 7208.)

§ 130-228. Tuberculous State prisoners to be segregated.—It shall be the duty of the board of directors of the State's prison to provide separate cells or apartments for the confinement of prisoners sentenced to that institution for a term of imprisonment, who have been examined and pronounced by the physician in charge to be affected with tuberculosis. (1907, c. 567, s. 3; C. S., s. 7209.)

§ 130-229. Separate cells for tuberculous prisoners; fumigation.—Cells or places of confinement provided for prisoners affected with tuberculosis must be kept exclusively for such prisoners, and when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or county health officer, or the physician in charge and the health authorities of the State's prison, have been notified, and until such cells or places of confinement have been thoroughly fumigated and disinfected under the supervision of such officials in the manner required by the State Board of Health. (1907, c. 567, s. 4; C. S., s. 7210.)

§ 130-230. Prison authorities to have prisoners suspected to be tuberculous examined.—When a prisoner is committed to any prison or place of confinement designated in this article, and the sheriff of the county, the warden of the State's prison or other authorities of the prison know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of such authorities to cause the prisoner to be examined by the county physician, the county health officer, or the physician in charge within five days after the prisoner has been committed or sentenced to the prison. (1907, c. 567, s. 5; C. S., s. 7211.)

Part 2. Prevention of Tuberculosis Among Prisoners.

§ 130-231. Tuberculous prisoners not to be worked. — No prisoner suffering with tuberculosis shall be worked on any public or private works. (1917, c. 262, s. 1; C. S., s. 7213; 1943, c. 543.)

Editor's Note. — The 1943 amendment rewrote this section.

§§ 130-232, 130-233: Repealed by Session Laws 1943, c. 543.

§ 130-234. Health authorities to examine all prisoners.—It shall be the duty of every county physician or city physician, or county health officer, or city health officer, or other physician having in charge the medical care of prisoners in any city or county in this State, or on any public or private works where prisoners or convicts are employed, to make a thorough physical examination of every prisoner committed to the county or city jail or to the county or city chain gang or road force, or any public or private works within forty-eight hours after the admission of such prisoner; and when he finds a prisoner suffering with tuberculosis, he shall make a written report of same to the State Board of Health, stating in detail the conditions found and the stage of the disease, within twenty-four hours after making such diagnosis, and he shall also report same to the superintendent of the chain gang or the jailer or the superintendent of the public or private works, and to the sheriff of the county, in writing, within twenty-four hours after having made such diagnosis of tuberculosis. (1917, c. 262, s. 4; C. S., s. 7216.)

§ 130-235. Officials in charge of prisoners to report on health.— Every superintendent of convicts, or superintendent of public or private works where convicts are employed, and the superintendent of the central prison and State farm, and every jailer, shall make such reports as to the existence of cases of tuberculosis or suspected cases of tuberculosis, or other disease or diseases, and loss of time on account of sickness, and the disease or diseases causing such loss of time and such other things that may have a bearing on the health of the prisoners and the sanitation of the camp, prison, or jail, to the State Board of Health at such stated periods and on such stated forms as may be requested by the State Board of Health. And every health officer or other physician having charge of prisoners in county convict camps, on county or city roads or streets or public or private works, or in jails or prisons, State, city, or county, shall likewise make such reports to the State Board of Health as to the physical condition and transfer of prisoners and as to the sanitary condition of camps, jails, or prisons, as may be requested by the State Board of Health. (1917, c. 262, s. 5; C. S., s. 7217.)

§ 130-236. Reports to include transference and particulars as to tuberculous prisoners. — The superintendent of the central prison or State farm, convict camp, or of any public or private works where convicts are used, and the jailers of the county jails and the sheriff of the county, and the medical officer connected with any of the above-mentioned places where convicts are kept or worked, shall make such reports to the State Board of Health as to transference of prisoners suffering with tuberculosis, giving name of prisoner, length of time said prisoner had been under his jurisdiction, the stage of the disease, point or place to which he was transferred, name and address and official title of the person to whom he was transferred, and such other information as may be requested by the State Board of Health. (1917, c. 262, s. 6; C. S., s. 7218.)

§ **130-237. Food and work of tuberculous prisoners.**—In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the superintendent of the central prison and State farm and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. And such prisoners suffering with tuberculosis shall only do such work as may be prescribed by the prison physician. (1917, c. 262, s. 7; C. S., s. 7219.)

§ **130-238. Violation of article misdemeanor.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. (1907, c. 567, s. 7; 1917, c. 262, s. 8; C. S., s. 7220.)

Article 21.

Health of Domestic Servants.

§ **130-239. Domestic servants required to furnish health certificate.**—Hereafter all domestic servants who shall present themselves for employment shall furnish their employer with a certificate from a practicing physician or the public health officer of the county in which they reside, certifying that they have been examined within two weeks prior to the time of said presentation of said certificate, that they are free from all contagious, infectious or communicable diseases and showing the nonexistence of any venereal disease which might be transmitted. Such certificate shall be accompanied by the original report from a laboratory approved by the State Board of Health for making such tests, showing that the Wassermann or any other approved tests of this nature are negative. Such tests shall have been made within two weeks of the time of the presentation of such certificates; and such certificate shall also affirmatively state the nonexistence of tuberculosis in the infectious state. (1937, c. 337, s. 1.)

§ **130-240. Annual examinations.**—All domestic servants employed shall be examined at least once each year and as often as the employer may require, and upon examination shall furnish to the employer all of the evidence of the condition of their health, as is set out in § 130-239. (1937, c. 337, s. 2.)

§ **130-241. Punishment for failure of servants to comply; publication of law by county health officer.**—Any domestic servant who shall fail or refuse to comply with the terms of §§ 130-239 and 130-240, upon conviction shall be fined not more than $50.00 or imprisoned not more than thirty days. (1941, c. 223.)

Article 22.

Surgical Operations on Inmates of State Institutions.

§ **130-242. Operations for improvement of mental, moral, or physical condition.**—The medical staff of any penal or charitable hospital or institution of the State of North Carolina is hereby permitted and instructed to have any surgical operation performed by competent and skillful surgeons upon any inmate of any such penal or charitable hospital or institution when, in the judgment of the board hereinafter created in the next succeeding section, such operation would be for the improvement of the mental, moral, or physical condition of such inmate of any such institution: Provided, such operation shall not be performed until same shall have been affirmed by the Governor and the secretary of the State Board of Health. (1919, c. 281, s. 1; C. S., s. 7221.)

§ 130-243. Board of consultation for carrying out provisions of this article.—At least one representative of the medical staff of the several charitable and penal institutions of the State, and one from the State Board of Health, such representatives to be designated by the governing bodies of the several institutions, shall constitute a board of consultation for the carrying out of the provisions of this article. Such board shall cause a permanent record to be kept by one of its members, designated as secretary, of all its actions and judgments, taken at a meeting held only after due notice has been issued to all its members. (1919, c. 281, s. 2; C. S., s. 7222.)

§ 130-243.1. Permission for surgical operations where emergency exists.—Notwithstanding the provisions of §§ 130-242 and 130-243, when in the opinion of the medical staff or medical superintendent or director of a State institution, a patient, inmate or prisoner is suffering from an acute medical or surgical condition which if allowed to continue without surgical operation will within the space of a few hours seriously endanger the life of the aforesaid patient, inmate or prisoner, and where it has not been possible within a reasonable length of time to notify, and to secure permission for the operation from some responsible member of the family for the surgical operation deemed necessary, the medical superintendent, surgical consultant, and local health officer of the county in which the institution is located shall constitute a board to pass upon the seriousness of the condition of the aforesaid patient, inmate, or prisoner and may by unanimous agreement authorize the surgical operation deemed necessary including the administration of an anesthetic, and the surgical consultant may proceed with the surgical operation without further consent being necessary.

The description of the medical and surgical condition of the patient and the measures taken to obtain permission for the operation shall be made a part of the medical record of the institution, signed by the medical superintendent or director, the surgical consultant, and the local health officer and copies of this shall be furnished the surgical consultant and the local health officer. (1947, c. 537, s. 24.)

§ 130-243.2. Operative permission when no responsible relative or guardian can be found.—Notwithstanding the provisions of §§ 130-242, 130-243 and 130-243.1, when it shall appear to the medical staff or consultants of a State hospital or State institution that a patient, inmate or prisoner of such State hospital or State institution is in need of some type of surgical operation for the preservation or restoration of health and when no responsible relative or guardian of such patient, inmate or prisoner can be located, as shown by the return of a registered letter to the last known address of the guardian or responsible relative, the medical superintendent or the director of the State institution, the surgical consultant, and the local health officer of the county in which the hospital or institution is located shall constitute a board to pass upon the physical condition of the patient and may by unanimous agreement authorize the surgical operation deemed necessary, including the administration of an anesthetic, and the surgical consultant or qualified medical staff member may proceed with the surgical operation without further consent being necessary.

A description of the medical and surgical condition of the patient and the type of operation performed, signed by the board referred to above, shall be made a part of the medical record of the hospital or institution, and a copy of this description shall be furnished to the surgical consultant, the local county health officer, and the clerk of court of the county from which the patient was admitted or committed. (1951, c. 775.)

ARTICLE 23.

Maritime Quarantine.

§ 130-244. Fees charged on vessels.—Every vessel subject to visit and inspection shall pay a fee of five dollars, if of less than two hundred and fifty tons burden; if of more than two hundred and fifty and less than five hundred tons burden, eight dollars; if of more than five hundred and less than one thousand tons burden, ten dollars; if over one thousand tons, fifteen dollars, which shall be collected and accounted for by the quarantine officer, as provided for in this article, and every person taken to the hospital shall pay a fee not exceeding three dollars per day, until discharged by the quarantine officer, for the payment of which the vessel shall be responsible, and only such vessel shall be subject to visit and inspection as may be from ports designated, from time to time, by the medical officer, except that all vessels having sickness on board shall be brought to the visiting station for examination. (1868, c. 33, s. 5; Code, s. 2916; 1891, c. 533; Rev., s. 4522; C. S., s. 7231.)

§ **130-245. Pilots to bring vessels to station; penalty.**—It shall be the duty of all pilots to bring vessels to the visiting station, as they may be required from time to time by the quarantine officer, and they shall not take any vessel subject to quarantine or visitation, past the station, until released by the quarantine officer; and any pilot who shall willfully violate any quarantine regulation shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port in the State. (1868, c. 33, s. 6; Code, s. 2917; Rev., s. 4512; C. S., s. 7232.)

§ **130-246. Master refusing to obey regulations; penalty.** — Any master of a vessel who shall refuse to obey the quarantine regulations shall forfeit and pay a fine of two hundred dollars for each day he shall refuse to obey the same, for which forfeiture the property of the captain, together with the vessel and cargo, shall be held responsible. (1868, c. 33, s. 7; Code, s. 2918; Rev., s. 4523; C. S., s. 7233.)

§ **130-247. Violating quarantine regulations; penalty.** — Any person who shall violate the quarantine regulations, as prescribed from time to time by the quarantine officers, shall forfeit and pay the sum of two hundred dollars for each offense; and all penalties and forfeitures imposed by this chapter may be recovered before any court having jurisdiction, one-half to the informer, the other half to the payment of the expenses of the quarantine establishment. Any person who shall violate any of the rules and regulations made by the quarantine board for the control, government, and maintenance of the quarantine station on Cape Fear River, as provided for in this part of this article, shall be guilty of a misdemeanor. (1868, c. 33, s. 8; Code, s. 2919; Rev., ss. 3450, 4524; C. S., s. 7234.)

§ **130-248. Quarantine officer may issue warrants.**—The quarantine medical officer may issue a warrant to any sheriff or other officer, commanding him to arrest the body of any person violating the quarantine, and have him without delay before some competent jurisdiction for trial. (1868, c. 33, s. 9; Code, s. 2920; Rev., s. 4525; C. S., s. 7235.)

§ **130-249. Site may be sold and new site purchased.**—If the quarantine board, on investigation, shall consider a site further removed from inhabited places as essential to the public safety, and shall so recommend, it shall be the duty of the Governor to sell the present hospital site at Price's Creek in such manner as he may deem best, and make title to the purchaser thereof, and the moneys received for said site to turn over to the quarantine board, to be used by them for quarantine purposes at some other point as convenient as possible to the quarantine anchorage off Deepwater Point. (1889, c. 521, s. 5; Rev., s. 4534; C. S., s. 7236.)

§ **130-250. Control of maritime quarantine; rules.**—Except as otherwise provided in this chapter, the commissioners of navigation in the respective ports and inlets of the State, or where there are no commissioners of navigation, the governing authorities of any seaport town, may appoint such place or places as they may think proper for vessels to perform quarantine; and when a vessel shall arrive at any port or inlet of this State, having an infectious distemper on board, or shall come from any place or port which at the time of her sailing, or shortly before, was infected with any malignant disorder, the master and pilot of such vessel shall anchor her at the place so appointed, and give immediate information thereof to the county physician or health officer of the county in which such port is situated or to the municipal physician or health officer of such town, who shall thereupon cause such vessel and her crew to be examined by the county or municipal health authorities, who shall have power to order and command the master of the vessel, crew, and passengers to perform such quarantine as shall be deemed most proper and reasonable to check or prevent any infectious distemper from spreading in this State, and to require every person on board such vessel strictly to perform quarantine, and to obey the orders given by the health authorities aforesaid respecting the victualing, purifying, and cleansing of such vessel and all articles on board, and to regulate and control the intercourse of such persons with the inhabitants of the State, the receiving any person on board or the putting him on shore; and if any pilot or master neglect to give such information as above required, the pilot for such neglect shall forfeit and pay one hundred dollars, and the master for a like neglect shall forfeit and pay two hundred dollars. In case the master of any vessel ordered to perform quarantine should refuse to comply with or fail to fulfill the orders for performing quarantine with his vessel, he shall forfeit and pay two hundred dollars for each day he shall fail to perform the quarantine. The property of the captain, together with the vessel and cargo, whether owned by the captain or not, shall be liable for the penalty herein imposed. If there be at the port where the vessel enters a port physician, as provided for in this article, he shall perform the duties and have all the power by this section conferred upon the health authorities aforesaid. The State authorities shall co-operate in all matters of quarantine with the federal authorities. (1783, c. 194, s. 12, P. R.; 1793, c. 379, s. 1, P. R.; 1802, c. 624, P. R.; R. C., c. 94, s. 1; Code, s. 2893; Rev., s. 4510; C. S., s. 7237.)

§ **130-251. Commissioners of navigation authorized to appoint harbor master and health officer.**—The commissioners of navigation of the several seaport towns in the State shall have power to appoint a harbor and health officer, to prescribe their duties and authority, to make rules and regulations for their government, allow them a reasonable compensation for their services, and determine how such compensation is to be paid. And they shall have power to pass such bylaws (not inconsistent with the laws of the land) for the better regulation of the quarantine to be performed by vessels arriving from ports infected or suspected to be infected with any infectious disease, and for preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to such bylaws by imposing such penalties as they may think proper. (R. C., c. 94, s. 13; Code, s. 2905; Rev., s. 4537; C. S., s. 7238.)

§ **130-252. Governing authorities of seaport towns; powers.**—The governing authorities of the several seaport towns and towns having a port of entry, where there are no commissioners of navigation, shall have the same power and authority and be subject to the same duties as are prescribed for the commissioners of navigation in relation to the quarantine of vessels in the ports of their respective towns; and all persons offending against the regulations of such governing authorities shall be subject to the same fines, penalties, and forfeitures as though the said regulations had been made by the commissioners of navigation. (R. C., c. 94, s. 14; Code, s. 2906; Rev., s. 4536; C. S., s. 7239.)

§ **130-253. Port physician; appointment.**—The commissioners of navigation in the several ports of the State, and, where there are no such commissioners, the governing authorities of the several seaport towns, may appoint port physicians, and regulate and prescribe the fees to which they shall be respectively entitled, according to the different quarantine stations, which they shall be bound to attend for the purpose of inspecting vessels, as required by this article, and giving certificates of their situation and condition, in regard to the health of their respective crews and passengers. (1817, c. 946, s. 2, P. R.; R. C., c. 94, s. 3; Code, s. 2896; Rev., s. 4517; C. S., s. 7240.)

§ 130-254. Vessels from infected ports to anchor at quarantine; punishment for failure.—If any vessel shall be brought into the State from a place which at the time of her departure was infected with the yellow fever, smallpox, or other infectious disorder, or if any vessel, arriving in the State, shall have the smallpox or yellow fever or other infectious disorder on board, or shall have had such disorder on board during her passage to the State, such vessel shall be anchored at the place appointed for quarantine, and there remain until permitted to remove by the commissioners of navigation, or by the municipal authorities of the town to which the vessel is bound, or by the county physician or health officer. If such vessel shall come to any town or harbor without permission obtained as herein required, the pilot or master conducting the vessel or permitting her to be so conducted shall be guilty of a misdemeanor, and fined not less than one thousand dollars and imprisoned not exceeding one year. (1817, c. 946, s. 1, P. R.; R. C., c. 94, s. 2; Code, s. 2894; Rev., ss. 3451, 4511; C. S., s. 7241.)

§ 130-255. Pilots bringing in vessels without certificate; penalty.—If any pilot shall bring any vessel beyond the place fixed and limited by the commissioners of navigation without a certificate of the health officer declaring that there is no danger to be apprehended from any infectious disease on board said vessel, such pilot shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port of the State. (1797, c. 486, s. 2, P. R.; R. C., c. 94, s. 12; Code, s. 2904; Rev., s. 4513; C. S., s. 7242.)

§ 130-256. Master must declare health of crew.—The commissioners of navigation or the county physician or health officer may, whenever they think proper, require the master of a vessel, on his arrival in the State, to declare on oath the state of the health of himself, crew, and passengers, and the place whence he came. And if any master shall give a false declaration, or any physician shall willfully give a false certificate of the health of the persons on board any such vessel, he shall forfeit and pay two thousand dollars. (1793, c. 379, s. 6, P. R.; R. C., c. 94, s. 9; Code, s. 2901; Rev., s. 4514; C. S., s. 7243.)

§ 130-257. Vessel removed to quarantine.—The commissioners of navigation or (where there are no such commissioners) the governing authorities of the town in the harbor of which any vessel has arrived in violation of this article, or the county physician or county health officer as aforesaid, may use such force as shall be necessary to remove said vessel to the place of quarantine; their reasonable charge for which service shall be paid by the master or owner of the vessel, and may be recovered of either of them before any court having jurisdiction. (1817, c. 926, s. 2, P. R.; R. C., c. 94, s. 3; Code, s. 2895; Rev., s. 4515; C. S., s. 7244.)

§ 130-258. Vessel furnished with provisions. — The commissioners of navigation or (where there are no such commissioners) the governing authorities of the seaport town are empowered and directed to furnish any vessel, ordered to ride quarantine, with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel, and cargo shall be liable. (1793, c. 379, s. 7, P. R.; R. C., c. 94, s. 10; Code, s. 2902: Rev., s. 4516; C. S., s. 7245.)

§ 130-259. Going on quarantined vessel; penalty.—When any vessel shall be directed to perform quarantine and any person knowing of such order, by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners of navigation or the county physician or county health officer aforesaid, such person shall forfeit and pay one hundred dollars. If any person shall be permitted by the master to come on board without informing him of the orders as to quarantine and intercourse given as provided in § 130-250 of this article, the master shall forfeit and pay two hundred dollars for every person so offending, and four hundred dollars for suffering any person so on board to depart his vessel without permission as provided in this article, and the commissioners of navigation or the county physician or county health officer are empowered to order every person who shall go on board any such vessel to remain there for such length of time as they may think proper; and if he disobey such order, he shall pay one hundred dollars. (1793, c. 397, s. 3, P. R.; R. C., c. 94, s. 6; Code, s. 2898; Rev., s. 4518; C. S., s. 7246.)

§ **130-260. Landing goods from quarantined vessels; penalty.**—If any master of a vessel ordered to ride quarantine shall convey, or cause or permit to be conveyed, any article of goods, wares, and merchandise from his vessel on any other lands or into any other boat or vessel than the commissioners of navigation or the county physician or county health officer shall authorize, he shall forfeit and pay two hundred dollars for every such offense. And any other person so conveying, or causing to be conveyed, any article as above-mentioned, shall be liable to the like penalty. (1793, c. 379, s. 5, P. R.; R. C., c. 94, s. 8; Code, s. 2900; Rev., s. 4519; C. S., s. 7247.)

§ **130-261. Person breaking quarantine to be returned.**—The commissioners of navigation or the county physician or county health officer, respectively, may issue their warrant to any sheriff or other officer, commanding him to take the body of any person that may have left any vessel ordered to ride quarantine, and carry him on board of said vessel; and the officer may summon such persons to assist him in the execution of the warrant as he may see fit. (1793, c. 379, s. 4, P. R.; R. C., c. 94, s. 7; Code, s. 2899; Rev., s. 4520; C. S., s. 7248.)

§ **130-262. Penalty for breaking quarantine.**—When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, contrary to the order and direction of the commissioners of navigation or the county physician or county health officer, leave the vessel and land on any other place than they shall allow, the seaman or passenger offending shall forfeit and pay two hundred dollars for each offense; and when he has left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offense of any of his passengers or seamen. (1793, c. 379, s. 2, P. R.; R. C., c. 94, s. 5; Code, s. 2897; Rev., s. 4521; C. S., s. 7249.)

§ **130-263. Disposition of penalties and forfeitures.**—All penalties and forfeitures imposed by this article may be recovered and applied, one-half to the use of the informer, the other half by the commissioners of navigation for the use and benefit of the navigation of the port within whose jurisdiction the penalty or forfeiture may have been incurred. (1793, c. 379, s. 8, P. R.; R. C., c. 94, s. 11; Code, s. 2903; Rev., s. 4538; C. S., s. 7250.)

ARTICLE 24.

Meat Markets and Abattoirs.

§ **130-264. Sanitation and rating of places selling fresh meats.**—For the better protection of the public health, the State Board of Health is hereby authorized, directed and empowered to prepare and enforce rules and regulations governing the sanitation of meat markets, abattoirs, and other places where meat or meat products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No such meat market or abattoir shall operate which receives a sanitary rating of less than seventy per cent (70%): Provided, that this article shall not apply to farmers and others who raise, butcher and market their own meat or meat products. (1937, c. 244, s. 1.)

§ 130-265. When inspectors required to file reports with local health officer.—Where municipalities or counties have a system of meat inspection as already provided by law the person or persons responsible for such meat inspection work shall file a copy of all inspection work, reports and other official data with the city or the county health officer, as the case may be, and in municipalities and counties having no organized health department, such person or persons shall file a copy of all inspection work, reports and other official data with the State health officer. The State Board of Health shall provide or approve the report forms referred to in this section. (1937, c. 244, s. 2.)

§ 130-266. Violation a misdemeanor.—Any person, firm, or corporation found guilty of violating any of the provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned in jail for not less than thirty days at the discretion of the court. (1937, c. 244, s. 3.)

§ 130-267. Effect of article.—Nothing in this article shall in any way repeal or affect §§ 106-159 to 106-166, or the rules and regulations promulgated thereunder. (1937, c. 244, s. 4.)

ARTICLE 25.

Regulation of the Manufacture of Bedding.

§ 130-268. Definitions; possession prima facie evidence of intent to sell.—As used in this article:

The word "mattress" means: Any mattress, upholstered spring, comforter, pad, cushion, or pillow to be used in sleeping.

The word "person" means: Any individual, corporation, partnership, or association.

The term "new material" means: Any material which has not been used in the manufacture of another article or used for any other purpose: Provided, this shall not exclude by-products of industry that have not been in human use, unless included in the following paragraph.

The term "previously used material" means: (a) Any material which has been used in the manufacture of another article or used for any other purpose: (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including juts and shearings.

The word "renovate" means: The reworking of a used mattress and returning it to the owner for his own personal use or the use of his immediate family.

The word "manufacture" means: Any making or remaking of a mattress out of new or previously used material, other than renovating.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, offer to sell, deliver or consign in sale, or possess with intent to sell, deliver, or consign in sale.

Possession of one or more articles covered by this article when found in any store, warehouse, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell, or sterilize and sell.

All words shall include plural and singular, masculine and feminine, as the case demands. (1937, c. 298, s. 1.)

§ 130-269. Sterilization; tagging mattresses received for renovation, etc.—No person shall renovate a mattress without first sterilizing it by a process approved by the State health officer.

No person shall manufacture a mattress containing previously used material without first sterilizing such material by a process approved by the State health officer.

No person shall sell or give away in connection with a sale a used mattress or a mattress containing any previously used material unless sterilized, since last used, by a process approved by the State health officer: Provided, this article shall not apply to a mattress sold by the owner from his home direct to the purchaser, unless such mattress has been exposed to an infectious or contagious disease.

Any person desiring to operate a sterilizer shall first secure license from the State health officer, the fee for which shall be twenty-five dollars ($25.00) for each calendar year or part thereof. Such license shall be kept conspicuously posted in the place of business: Provided, however, that blind persons operating under the direction of the State Commission for the Blind shall be exempt from said license fee.

Any sterilizing apparatus used under this article shall be inspected and approved by a representative of the State health officer. If, in the opinion of such representative, the apparatus does not effectively sterilize, or if at any time it is not maintained in a satisfactory condition, it may be condemned by any representative of the State health officer, in which event it shall not be used for sterilizing any mattress or material required to be sterilized under this article until the defects have been remedied and the apparatus approved by a representative of the State health officer.

Any person sterilizing material or mattresses for another person shall keep in a well-bound book a complete record of the kind of material and mattresses so sterilized, such record to be open to inspection by any representative of the State Board of Health.

Any person who receives a mattress for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2.)

Editor's Note. — This statute escapes the condemnation which befell the Pennsylvania statute in Weaver v. Palmer Bros. Co., 270 U. S. 402, 46 S. Ct. 320, 70 L. Ed. 654 (1926). In fact, the opinion in that case indicates that sterilization is the proper way to regulate the manufacture of bedding and mattresses from secondhand material. 15 N. C. Law Rev. 328.

§ 130-270. Manufacture regulated; required information to be stamped on tags; use of "sweeps" or "oily sweeps" material.—No person shall manufacture or sell a mattress to which, except as otherwise provided in § 130-274, is not securely sewed a cloth or cloth-backed tag at least two (2) inches by three (3) inches in size, to which is affixed the adhesive stamp provided in § 130-272. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English (a) the name of the material or materials used to fill such mattress; (b) the name and address of the maker or vendor of the mattress; (c) in letters at least one-eighth inch high the words "made of new material," if such mattress contains no previously used material; or the words "made of previously used materials," if such mattress contains any previously used material; or the word "secondhand" on any mattress which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or secondhand mattresses. Such tag shall be approved by the State health officer.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the stamp required by this article, and shall be sewed to the outside covering of every mattress being manufactured, before the filling material has been inserted.

When the word "cotton" is used, the kind of cotton shall be clearly stated on said tag.

Material known in the cotton waste trade as "sweeps," or "oily sweeps" shall not be used unless washed in accordance with rules to be promulgated by the State Board of Health.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine and is inserted into the mattress in layers. (1937, c. 298, s. 3; 1951, c. 929, s. 2.)

Editor's Note. — The 1951 amendment inserted the words "except as otherwise provided in § 130-274" in the first paragraph.

§ **130-271. Altering, etc., tags prohibited.**—No person, other than a purchaser for his own use or a representative of the State Board of Health, shall remove from a mattress, or deface or alter, the tag required by this article. (1937, c. 298, s. 4.)

§ **130-272. Enforcement funds.** — The State health officer is hereby charged with the administration and enforcement of this article, and he shall provide specially designated adhesive stamps for use under § 130-270. Upon request he shall furnish no less than five hundred said stamps to any person paying in advance eight dollars ($8.00) per five hundred stamps. State institutions engaged in the manufacture of mattresses for their own use or that of another State institution shall not be required to use such stamps.

All money collected under this article shall be paid to the State health officer, who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the State Board of Health, solely for expenses in furtherance of the enforcement of this article. The State health officer shall semiannually render to the State Auditor a true statement of all receipts and disbursements under said fund, and the State Auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for (a) salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or (b) expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the State health officer without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the State Board of Health. (1937, c. 298, s. 5; 1949, c. 636.)

Editor's Note. — The 1949 amendment reduced the price of bedding stamps from ten dollars to eight dollars per five hundred.

§ **130-273. Enforcement by State Board of Health.**—The State Board of Health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this article. Any person who shall hinder or prevent any representative of the State Board of Health in the performance of his duty hereunder shall be guilty of a violation of this article.

Every place where mattresses are made, remade, renovated or sold, or where material, which is to be used in the manufacture of mattresses, is mixed, worked, or stored, shall be inspected by duly authorized representatives of the State Board of Health.

Any representative of the State Board of Health may order off sale, and so tag, any mattress which is not made and tagged as required by this article, or which is tagged with a tag containing a statement false or misleading, and such mattress shall not be sold until such defect is remedied and a representative of the State Board of Health has reinspected same and removed the "off sale" tag.

Any person supplying material to a mattress manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The mattress manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the State Board of Health.

When an authorized representative of the State Board of Health has reason to believe that a mattress is not tagged or filled as required by this article, he shall have authority to open a seam of such mattress to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such mattress, and he shall have power to seize and hold for evidence any such records and any mattress or mattress material which in his opinion is made, possessed, or offered for sale contrary to this article, and shall have power to take a sample of any mattress or mattress material for the purpose of examination or for evidence. (1937, c. 298, s. 6.)

§ **130-274. Licenses.**—No person, except for his own personal use or the use of his immediate family, and blind persons operating under the direction of the State Commission for the Blind, shall manufacture mattresses until he has secured a license therefor from the State Board of Health upon payment of an annual inspection fee of twenty-five dollars ($25.00), and in case such mattresses are manufactured from previously used material he shall also secure and pay for the additional license required under § 130-269. Any manufacturer who manufactures for sale and sells mattresses outside the State of North Carolina may, in lieu of paying the annual inspection fee of twenty-five dollars ($25.00) provided in this section, secure a special manufacturer's license graduated on the amount of mattresses sold outside the State of North Carolina during the previous calendar year as follows:

Not exceeding 30,000 mattresses	$ 25.00
30,000 to 50,000 mattresses	200.00
Over 50,000 mattresses	400.00.

The holder of a special manufacturer's license shall not be required to purchase or affix the adhesive stamps provided for in G. S. 130-270 and 130-272 with respect to mattresses manufactured for sale and shipment outside this State when such mattresses are in fact so sold and shipped. Notwithstanding any other provisions of this section, no mattresses shall be sold for use or resale in this State unless stamps have been affixed thereto as provided by G. S. 130-270 and 130-272. The licenses so issued shall be valid until the end of the calendar year in which issued, or until voided for violation of this article, and shall at all times be kept conspicuously posted in the place of business.

The State health officer may revoke and void the aforesaid license and the sterilizing license issued under § 130-269 of any person convicted a second time for violating this article; and such person shall not thereafter make, remake, renovate, or sell a mattress for a period of six months after such revocation, and then only after he has paid the required fees for new licenses. (1937, c. 298, s. 7; 1951, c. 929, s. 1.)

Editor's Note. — The 1951 amendment added the provisions in the first paragraph pertaining to the special manufacturer's license.

§ **130-275. Violation of article.**—Any person who fails to comply with any provision of this article, or who counterfeits the stamp provided in § 130-272, shall be guilty of a violation of this article. Each stamp so counterfeited and each mattress made, renovated, or sold contrary to this article shall be a separate violation. (1937, c. 298, s. 8.)

§ **130-276. Issue of warrants.**—If any person submits reasonable proof of any violation of this article to any law enforcement officer, or to a representative of the State Board of Health, it shall be the duty of said officer or representative of the State Board of Health to swear out a warrant against the offender. (1937, c. 298, s. 9.)

§ **130-277. Penalty.**—A person who violates this article shall, upon conviction thereof, be fined not more than fifty dollars ($50.00), or imprisoned in the county jail not to exceed thirty days. (1937, c. 298, s. 10.)

§ **130-278. Blind persons exempt.** — In the cases where mattresses are manufactured or renovated in a plant or place of business owned solely by blind persons in which place of business not more than one sewing assistant is employed in the manufacture or renovation of mattresses, neither the payment of the license fees nor the use of stamps shall be required, and mattresses made by such blind persons may be sold by any dealer without the stamps being affixed. (1937, c. 298, s. 11.)

ARTICLE 26.

Transportation of Foodstuffs.

§ **130-279. Sanitation of cars.** — It shall be unlawful for any carrier transporting food intended for human consumption to transport the same knowingly in cars or other vehicles which have been defiled by livestock or by human beings without having first put said car or vehicle in a sanitary condition.

It shall be unlawful for any person to defile any railroad car by urinating therein or by passing therein excreta.

Any person, firm, or corporation who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. (1925, cc. 114, 213.)

ARTICLE 27.

Private Hospitals and Educational Institutions.

§ **130-280. Regulation of sanitation by State Board of Health.**—To safeguard the health of patients, residents and students of private hospitals, sanitariums, sanatoriums and educational institutions in North Carolina, the State Board of Health is hereby authorized and empowered to make rules and regulations governing the sanitation of all such establishments and to provide a system of grading applicable thereto. (1945, c. 829, s. 1.)

§ **130-281. Inspection.**—The officers, sanitarians and agents of the State Board of Health are hereby empowered and authorized to enter any private hospital, sanitarium, sanatorium, or educational institution for the purpose of making inspections, and it is hereby made the duty of every owner, superintendent, manager, agent or person in charge of such establishment to afford free access to every part of such establishment, and to render all aid and assistance necessary to enable the sanitarians or agents of the State Board of Health to make a complete examination thereof, but the privacy of no person may be violated without his consent. The sanitarian or agent shall leave with the management, or person in control, a copy of the report and a grade card showing the grade of such place, and it shall be the duty of said owner, superintendent, manager, agent or person in charge, to post said card in a conspicuous place where it may be readily observed by the patients, residents or students. The grade card shall not be removed by anyone, except an authorized sanitarian or agent of the State Board of Health, or upon its instruction. If any establishment receives a grade below the minimum standard set by the State Board of Health, a reasonable time shall be given by the State Board of Health in which to make the alterations necessary to raise the grade. If the alterations are not made within the time set, the owner, superintendent, manager, agent or other person in charge shall be subject to the penalties provided by § 130-282. (1945, c. 829, s. 2.)

§ 130-282. Violation a misdemeanor.—Any owner, superintendent, manager, agent, or person in charge of any hospital, educational institution, sanitarium, sanatorium, or any other person who willfully obstructs, hinders or interferes with a sanitarian, agent, or officer of the State Board of Health, in the proper discharge of his duty, or who shall be found guilty of violating any other provision of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars ($10.00), nor more than fifty dollars ($50.00), or imprisoned for not more than thirty (30) days. Each day the provisions of this article are violated shall constitute a separate offense. (1945, c. 829, s. 3.)

Article 28.

Cancer Control Program.

§ 130-283. State Board of Health to administer program.—The State Board of Health shall administer a program for the prevention and cure of cancer to the extent specified in this article, and to that end shall have the powers and duties hereinafter set forth. (1945, c. 1050, s. 1.)

§ 130-284. Financial aid for diagnosis, hospitalization and treatment.—The State Board of Health shall furnish to cancer patients and such other low income citizens, legal residents of North Carolina, who comply with the rules and regulations specified by the State Board of Health, such financial aid within the appropriations made in this article, for diagnosis, hospitalization and treatment, as may be approved for said patients found by the State Board of Health to be entitled thereto. Such diagnosis, hospitalization and treatment shall be given said patients in any hospital in this State which meets the minimum requirements for cancer control established by the State Board of Health as the hospital where such diagnosis, hospitalization and treatment shall be given. In order to administer such financial aid in the manner which will afford the greatest benefit to said cancer patients and to the people of the State, the State Board of Health is hereby authorized to promulgate rules and regulations specifying the terms and conditions upon which cancer patients may receive such financial aid, and act upon such applications in the manner which in its judgment will best effectuate the purposes of this article. The State Board of Health may develop with the State Board of Public Welfare procedures for determining the needs of indigent and other low income applicants for financial aid in carrying out the purposes of this article. (1945, c. 1050, s. 2.)

§ 130-285. Cancer clinics.—The State Board of Health is authorized to establish and designate minimum standards and requirements for the organization, equipment and conduct of cancer clinics or departments in general hospitals in this State to the end that said hospitals may intelligently prepare and equip their institutions adequately to diagnose, prevent and treat cancer. Provided that any clinic, group, organization or department set up, established or sponsored by the State Board of Health as set forth by this article shall:

1. Meet the minimum requirements of the American College of Surgeons for tumor clinics; or the minimum requirements of the Division of Cancer Control, North Carolina State Board of Health.

2. Each physician who shall staff such organization, board, or clinic, must be a diplomate of the American board of the speciality of medicine in which he is engaged, or one who has been approved by his county medical society or its duly appointed representative, and the Division of Cancer Control, North Carolina State Board of Health. (1945, c. 1050, s. 3; 1949, c. 1071.)

Editor's Note. — The 1949 amendment added that part of subsection 1 appearing after the semicolon, and that part of subsection 2 appearing after the word "engaged".

§ **130-286. Educational program.**—The State Board of Health shall collect information relating to the prevention and cure of cancer and shall sponsor an educational program for the purpose of aiding and informing the people of the State, as well as physicians and hospitals, in the prevention and cure of cancer, in the early diagnosis of cancer, and in its proper treatment. (1945, c. 1050, s. 4.)

§ **130-287. Gifts for program.**—The State Board of Health is authorized to receive gifts or donations of money, securities, radium, X-ray, or other equipment or supplies, real estate, or any other property of any kind or description which may be used in the program for the prevention and cure of cancer. Any funds or intangibles donated for such purposes are to be deposited with the State Treasurer and to be used in the cancer control work. (1945, c. 1050, s. 5.)

§ **130-288. Acquisition of hospitals, laboratories, etc.**—The State Board of Health is authorized to acquire, by gift, purchase (within the limits of appropriations available for such purposes), devise or otherwise, such laboratories, hospitals, equipment and supplies, or any other property, real or personal, as said Board shall deem needful to afford proper treatment and care to cancer patients in this State, and to carry out the program for the prevention and cure of cancer. (1945, c. 1050, s. 6.)

§ **130-289. Tabulation of records.** — The State Board of Health shall compile, tabulate and preserve statistical, clinical, and other records relating to the prevention and cure of cancer. (1945, c. 1050, s. 7.)

§ **130-289.1. Reporting of cancer required.** — It shall be the duty of every physician to notify the local health officer of the name, address and such other items as may be specified by the State health officer of any person by whom such physician is consulted professionally and who is found to have cancer of any type, or who is suspected of having cancer of any type. The report shall be made within five days after the diagnosis of cancer is established, or within five days after obtaining reasonable evidence for believing that such person is so afflicted. The forms used for reporting shall be prepared and supplied by the State Board of Health. The local health officer shall forward to the State Board of Health all report cards within five days of their receipt from the physician. (1949, c. 499.)

§ **130-290. Assistance to hospitals and physicians.**—The State Board of Health shall assist general hospitals in the State in organizing and conducting cancer clinics as a part of the cancer control program, and shall assist physicians and hospitals in establishing the early diagnosis of cancer and in preparing themselves to render the most efficient service in the cancer control program. (1945, c. 1050, s. 8.)

§ **130-291. Cancer committee of North Carolina Medical Society.**—In formulating the plans and policies of the program for the prevention and cure of cancer, the State Board of Health shall consult with the cancer committee of the North Carolina Medical Society, which shall consist of one physician from each congressional district, to the end that the cancer control program shall most effectively serve the welfare of the people of the State, and such plans and policies shall be presented to and approved by said cancer committee. (1945, c. 1050, s. 9.)

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§ **130-292. Notification of premature births to be given.**—If an infant is born prematurely in a place other than a hospital equipped to care for prematurely born infants, and weighs five pounds and eight ounces (2500 grams) or less at birth, the physician or midwife having charge of the birth of such infant shall forthwith give notification thereof to the local health department for the county in which such infant was born. In case there is no local health department operating or functioning for the county in which such infant was born, then such notification shall be given to the county physician of the county in which such infant was born. The notification shall state the name of the mother of such infant and the street address, or other address, where the infant is at the time of such notification. Such notification shall be given as soon as practicable after birth occurs and by telephone if possible, and if not then, a written report shall be filed within twenty-four hours after such birth with the local health department or the county physician of the county in which such infant was born in case there is no functioning health department. In the case of such an infant prematurely born in a hospital equipped to care for prematurely born infants, the superintendent, or other person in charge of such hospital, shall forthwith file with the local health department or the county physician of the county if there is no local health department for the county, such notification of the birth of such infant within twenty-four hours. After notification of proper agency or county physician, such agency or county physician shall take such steps as are necessary to provide proper care for said infant in accordance with best medical practice and to utilize, when possible, such State agencies as are available, including the North Carolina State Board of Health's program for premature care. (1949, c. 490.)

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ARTICLE 1.

Orthopedic Hospital.

§ 131-1. Board of trustees; term of office; organization and powers.—The Governor shall appoint a board of trustees, consisting of nine members, for the North Carolina Orthopedic Hospital, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have been appointed, and the term of office of each shall begin from the date of the selection of the site. The Governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make bylaws for the government of the same. (1917, c. 199, s. 4; C. S., s. 7254.)

§ **131-2. Authorized to accept donations.**—The board of trustees of the North Carolina Orthopedic Hospital are hereby authorized and empowered to accept gifts, grants, donations, devises, and bequests of money, lands, goods and other property for and on behalf of said institution. (1927, c. 188, s. 1.)

§ **131-3. Establishment of school for patients.**—There is hereby created and established in the North Carolina Orthopedic Hospital at Gastonia a school for patients who are between the ages of six and twenty-one years which shall be operated for the period of twelve months in each year, or such period during each year as such board of trustees may deem advisable, under the direction and supervision of the county board of education of Gaston County.

A principal and the necessary number of teachers in said school shall be allotted to said school by the State School Commission and shall be elected by the trustees of the North Carolina Orthopedic Hospital, upon the recommendation of the county superintendent of public instruction of Gaston County, which teachers shall hold certificates according to standards prescribed by the State Board of Education for teachers in the public schools of the State.

The State School Commission is hereby authorized to purchase such equipment and supplies as it deems necessary to carry out the purposes of this section. (1939, c. 186.)

Article 2.

Hospitals in Counties, Townships, and Towns.

§ **131-4. Establishment of public hospitals; election, tax, and bond issue.**—Any county, township, or town may establish a public hospital in the following manner:

1. Petition Presented.—A petition may be presented to the governing body of any county, township, or town, signed by two hundred resident freeholders of such county, township, or town, one hundred and fifty of whom, in the case of a county, shall not be residents of the city, town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, or to be thereafter selected by the governing body of such county, township or town, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.

2. Election Ordered.—Upon the filing of such petition the governing body of the county, township, or town shall order a new registration and shall submit the question to the qualified electors at the next general election to be held in the county, township, or town, or at a special election called for that purpose, first giving ninety days' notice thereof by publication once a week for four successive weeks beginning ninety days before the day of said election in one or more newspapers published in the county, township, or town, if any be published therein, and by posting such notice, written or printed, in each township of the

county, in case of a county hospital, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the county, township, or town. The election shall be held at the usual places in such county, township or town for electing officers, the election officers shall be appointed by the board of county commissioners and the vote shall be canvassed in the same manner as in elections for officers for such county, township, or town.

No action to question the validity of any such election shall be brought or maintained after the expiration of sixty days from the canvassing of said vote, and after the expiration of said period it shall be conclusively presumed that said election has been held in accordance with the requirements of this section, unless within said period such action is instituted.

3. Tax to Be Levied.—The tax to be levied under such election shall not exceed one-fifteenth of one cent on the dollar for a period of time not exceeding thirty years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings. (1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1; C. S., s. 7255; 1923, c. 244, s. 1; 1929, c. 247, ss. 1, 2, 4.)

Cross References. — As to power of county to establish hospitals and tuberculosis dispensaries, see § 153-9, subsection 24. As to power of municipalities to establish and regulate hospitals, etc., see §§ 160-230 and 160-232.

Editor's Note. — For brief comment on the 1923 amendment, see 1 N. C. Law Rev. 273.

§ **131-5. Election on tax levy; collection and application of funds.**—The governing body of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one-fifteenth of one cent on the dollar for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a ...... cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this article, and for no other purposes whatever. (1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2; C. S., s. 7256.)

§ **131-6. Curative statute.**—All elections heretofore called or held under the provisions of this article, as amended, where notice has been given in accordance with § 131-4, and the election officers have been appointed either in compliance with § 131-4 or by the county board of elections, are hereby validated and declared to be in accordance with the requirements of the statute on said subject. (1929, c. 247, s. 3.)

§ **131-7. Trustees; term of office; qualification and election.**—Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The trustees shall hold their offices until the next following general election, when seven hospital trustees shall be elected and hold their offices, two for two years, two for four years, three for six years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be practicing physicians. (1913, c. 42, s. 3; 1917, c. 98, s. 2; 1917, c. 268; C. S., s. 7257.)

Local Modification.—Alamance: 1943, c. 379, s. 1; Lee: 1951, c. 1209, s. 1; Yancey: 1929, c. 117.

§ **131-8. Officers elected by trustees; compensation.** — The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. The treasurer of the county, township, or town in which such hospital is located shall be treasurer of the board of trustees. The treasurer shall receive and pay out all moneys under the control of said board, as directed by it, but shall receive no compensation from such board. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of all the trustees present at a meeting of the board. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7258.)

§ **131-9. Trustees to have control, and to make regulations.**—The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose. (1913, c. 42, s. 4; C. S., s. 7259.)

§ **131-10. Power of board to appoint superintendent and assistants.** —The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and they shall in general carry out the spirit and intent of this article in establishing and maintaining a county, township, or town public hospital with equal rights to all and special privileges to none. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7260.)

§ **131-11. Meetings of board; reports required.**—The board of hospital trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the county, township, or town a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the year; and they shall at such time certify the amount necessary to maintain and improve the hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for such hospital, unless the same are purchased by competitive bidding. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7261.)

§ **131-12. Vacancies filled.**—Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the governing body of the county, township, or town and be filled in like manner as original appointments, appointees to hold office until the next following general election, when such vacancies shall be filled by election in the usual manner. (1913, c. 42, s. 5; 1917, c. 268; C. S., s. 7262.)

Local Modification.—Alamance: 1943, c. 379, s. 2.

§ **131-13. Deposit and payment of funds.**—All money received for such hospital shall be deposited in the treasury of the county, township, or town to the credit of the hospital fund, and paid out only upon warrants drawn by the auditor, or other proper officer, of such county, township, or town upon the properly authenticated vouchers of the hospital board. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7263.)

§ **131-14. Regulations as to bond issue.**—Whenever any county, township, or town in this State shall have provided for the appointment and election of hospital trustees, and voted a tax for a term not exceeding thirty years for hospital purposes, as authorized by law, the county, township, or town may issue bonds in anticipation of the collection of such tax in such sums and amounts as the board of hospital trustees shall certify to the governing body of such county, township, or town to be necessary for the purposes contemplated by such tax, but such bonds in the aggregate shall not exceed the amount which might be realized by said tax, based on the amount which may be yielded on the property valuation of the year in which the tax is voted. Such bonds shall mature in thirty years from date and shall be in sums not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not exceeding five per cent per annum, payable annually or semiannually; the bonds shall be payable at pleasure of county, township, or town after five years, and each of said bonds shall provide that it is subject to this condition, and shall not be sold for less than par, and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this article, and be numbered consecutively and redeemable in the order of their issuance. The governing body shall have the power and option of issuing, instead of long-term bonds, as above provided for, serial bonds in such forms and denominations as said governing body may determine, subject to the restrictions of this section. Said serial bonds may be issued as one issue or divided into two or more separate issues, and in either case may be issued all at one time or in blocks from time to time, and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No installments shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. Said bonds, if said governing body shall elect to issue serial bonds instead of long-term bonds, may be either coupon bonds or registered bonds, and if issued in coupon form may be registerable as to principal, or as to both principal and interest, and shall be substantially in the form provided for county bonds as aforesaid, and likewise subject to changes that will conform them to the provisions of this article. (1913, c. 42, s. 6; 1917, c. 268; C. S., s. 7264; 1923, c. 244, ss. 3, 4.)

Editor's Note. — The 1923 amendment increased the tax term and time in which bonds should mature from twenty to thirty years, and added the provision at the end of the section for issuing serial bonds.

§ **131-15. Condemnation of land.**—If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of law for the condemnation of land for railroads. (1913, c. 42, s. 7; 1917, c. 268; C. S., s. 7265.)

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

§ **131-16. Plans to be approved; advertisement for bids.**—No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1913, c. 42, s. 8; C. S., s. 7266.)

§ **131-17. Additional appropriation.**—In the counties, townships, or towns exercising the rights conferred by this article, the governing body may appropriate each year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established. (1913, c. 42, s. 10; 1917, c. 268; C. S., s. 7267.)

§ **131-18. Power to accept donations.**—Any person, firm, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such hospital shall have the right to vest title of the property so donated in said county, township, or town, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise, or bequest of such property. (1913, c. 42, s. 13; 1917, c. 268; C. S., s. 7268.)

§ **131-19. Persons entitled to benefit of hospital.**—Every hospital established under this article shall be for the benefit of the inhabitants of such county, township, or town, and of any person falling sick or being injured or maimed within its limits; but every person who is not a pauper shall pay to such board of hospital trustees, or such officers as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board, such hospital always being subject to such reasonable rules and regulations as the board may adopt, in order to render the use of the hospital of the greatest benefit to the greatest number. The board may exclude from the use of such hospital all persons who shall willfully violate such rules and regulations; the board may extend the privileges and use of such hospital to persons residing outside of such county, township, or town, upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1913, c. 42, s. 11; 1917, c. 268; C. S., s. 7269.)

§ **131-20. All persons subject to hospital regulations.**—When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe. (1913, c. 42, s. 12; C. S., s. 7270.)

§ **131-21. Municipal jurisdiction extended.**—The jurisdiction of the city, town, or village in or near which a public hospital is located shall extend over all lands used for hospital purposes outside the corporate limits, if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such public hospital. (1913, c. 42, s. 9; C. S., s. 7271.)

§ **131-22. Regulation of physicians and nurses practicing in hospitals.**—The board of trustees of such hospitals shall determine the conditions under which the privileges of practice within the hospital may be available to physicians, and shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital. (1913, c. 42, s. 14; C. S., s. 7272; 1925, c. 177.)

Editor's Note.—Prior to the 1925 amendment this section provided that no discrimination should be made and that a patient might employ his own physician.

§ **131-23. Training school for nurses.** — The board of trustees of such county, township, or town public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses. (1913, c. 42, s. 15; 1917, c. 268; C. S., s. 7273.)

§ **131-24. Room for examination of insane persons.**—The board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county, provided that such public hospital is located at the county seat. (1913, c. 42, s. 16; C. S., s. 7274.)

§ **131-25. Charity patients determined.**—The board of hospital trustees shall have the power to determine whether or not patients presented at the public hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves. (1913, c. 42, s. 18; C. S., s. 7275.)

§ **131-26. Department for tuberculous patients.**—The board of trustees are authorized to provide as a department of the public hospital, but not necessarily attached thereto, suitable accommodations and means for the care and treatment of persons suffering from tuberculosis, and to formulate such rules and regulations for the government of such persons, and for the protection from infection of other patients and of nurses and attendants in such public hospital, as they may deem necessary; and it shall be the duty of all persons in charge of or employed at such hospital, or residents thereof, to faithfully obey and comply with all such rules and regulations. The board of hospital trustees shall, if practicable, employ as head nurse to be placed in charge of the public tuberculosis sanatorium one who has had experience in the management and care of tuberculous persons. (1913, c. 42, s. 17; C. S., s. 7276.)

§ **131-27. Plans for county and municipal tubercular sanatoria.** — Any county or town desiring to erect a sanatorium or hospital, shack, tent, or other structure in which it is intended to keep persons suffering with tuberculosis shall first submit to the State Board of Health for its approval or rejection the plans of said sanatorium, hospital, shack, tent, or other structure, and it shall be unlawful for any county or town to begin the erection of any structure referred to above without the consent or approval of the State Board of Health.

Any person, firm, or corporation failing, neglecting, or refusing to comply with the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1917, c. 216, ss. 1, 2; C. S., s. 7277.)

§ **131-28. Nonresident tuberculous patients.**—The governing body of any county, township, or town where no suitable provision has been made for the care of indigent tuberculous residents may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department of such hospital, upon such reasonable terms as may be agreed upon. (1913, c. 42, s. 19; 1917, c. 268; C. S., s. 7278.)

Article 2A.

The County Hospital Act.

§ 131-28.1. Title of article.—This article shall be known and may be cited as "The County Hospital Act." (1945, c. 506, s. 1.)

§ 131-28.2. Conveyance of hospitals to counties; assumption of indebtedness approved by voters.—The governing body of any political subdivision or public hospital corporation or agency in the State is authorized to convey any hospital owned by it to the county in which such political subdivision or public hospital corporation or agency is located, upon such county assuming all outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and any county is hereby authorized to acquire any such hospital and, subject to the provisions of this section, to assume such indebtedness. The board of commissioners of any such county is hereby authorized and empowered to call an election of the qualified registered voters of the county on the question of the assumption by such county of the outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and the levy of a county-wide property tax without limitation as to rate or amount for the payment of the principal of and the interest on such indebtedness. Such election shall be called and conducted in accordance with the laws of North Carolina governing elections for the issuance of county bonds, and it shall be lawful to vote on other matters at such election. If a majority of the qualified registered voters of the county who shall vote on such assumption shall vote in favor thereof, then it shall be the duty of the board of commissioners of such county to include in the annual county budget beginning with the fiscal year next succeeding such election, a sum sufficient to meet the payment of the principal of and the interest on such indebtedness; provided, however, that said board shall have the same power and authority to fund or refund such indebtedness as it has to fund or refund other indebtedness of the county. Taxes levied under the terms of this section are hereby declared to be for a special purpose within the meaning of section six of article V of the Constitution of North Carolina, and the levy of such taxes for said special purpose is hereby given the special approval of the General Assembly. Upon the assumption of such indebtedness by the county, all funds on hand for the payment of the principal of and the interest on such indebtedness, and all funds subsequently collected from taxes already levied in such political subdivision on account of such indebtedness, shall be paid over to the county and used to reduce the amount of the county-wide tax levy authorized by such election. Upon approval of the assumption of such indebtedness by the county, such indebtedness shall become, to all intents and purposes, indebtedness of such county; and it is hereby specifically declared that all payments on account of the principal of such indebtedness which shall be made after such assumption shall be construed as a reduction of the outstanding indebtedness of the county within the meaning of section four of article V of the Constitution of North Carolina. (1945, c. 506, s. 2; 1949, c. 358, s. 1.)

Editor's Note. — The 1949 amendment substituted in the fourth sentence the words "who shall vote on such assumption shall vote in favor thereof" for the words "shall vote in favor of such assumption." For brief comment on amendment, see 27 N. C. Law Rev. 454.

§ 131-28.3. Counties authorized to erect, purchase and operate hospitals.—Each county in the State is hereby authorized to erect, remodel, enlarge and purchase hospitals, to finance the same as provided in this article, and to provide for the operation thereof. (1945, c. 506, s. 3.)

§ 131-28.4. Issuance of bonds subject to approval of voters.—Subject to the approval by the vote of a majority of the qualified registered voters of the county who shall vote thereon at an election to be called and conducted in accordance with the laws of North Carolina, any county, through its board of commissioners, is hereby authorized and empowered to issue bonds of the county for the special purpose of erecting, remodeling, enlarging or purchasing hospitals, including the acquisition of necessary land and necessary equipment, and to levy property taxes for the payment of such bonds and the interest thereon. Any bonds so voted, and any bond anticipation notes which may be issued to anticipate the receipt of the proceeds of such bonds, shall be issued in accordance with the provisions of the County Finance Act, as amended, and the Local Government Act, as amended. (1945, c. 506, s. 4; 1949, c. 358, s. 2.)

Editor's Note. — The 1949 amendment inserted the words "who shall vote thereon" near the beginning of the section. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.5. Referendum on question of tax to maintain hospital.—At any election at which the question of assumption by the county of hospital indebtedness pursuant to § 131-28.2, or at any election at which the question of issuing bonds of the county pursuant to § 131-28.4, shall be submitted to the qualified registered voters of the county, or at any other general or special election, there may be submitted to a vote of the qualified registered voters of such county the question of levying and collecting annually an ad valorem tax for the special purpose of maintaining any such hospital or hospitals from year to year, not greater than five cents on the one hundred dollars assessed valuation of taxable property in the county as shall be determined by the board of commissioners of such county, and if a majority of the qualified registered voters of the county who shall vote thereon shall vote in favor of levying and collecting such tax, the board of commissioners of such county shall be and hereby is authorized to levy and collect the same. The General Assembly does hereby give its special approval to the levy of the tax for the special purpose referred to in this section. (1945, c. 506, s. 5; 1949, c. 358, s. 3.)

Editor's Note. — The 1949 amendment inserted the words "who shall vote thereon" near the end of the first sentence. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.6. New registration may be ordered for election held under article.—A new registration may be ordered for any election to be held under this article, and in the event a new registration is ordered the same shall be called and conducted in accordance with the provisions of the laws of North Carolina governing the calling and conducting of elections for the issuance of county bonds. (1945, c. 506, s. 6; 1949, c. 358, s. 4.)

Editor's Note. — The 1949 amendment rewrote this section.

§ 131-28.7. Result of election to be published; time to assert invalidity.—The board of commissioners of the county shall prepare a statement showing the number of votes cast for and against each question submitted under the provisions of this article, and the number of voters qualified to vote in each election at which any one or more of such questions shall be submitted, and declaring the result of the election on each such question, which statement shall be signed by a majority of the members of the board of commissioners and delivered to the clerk of said board, who shall record it in the minutes of the board and file the original in his office and publish it once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result as provided herein. (1945, c. 506, s. 7.)

§ 131-28.8. Appointment of board of trustees; terms of office; vacancies.—Should a majority of the qualified registered voters of any county who shall vote thereon at an election called and held as above provided approve the assumption by the county of hospital indebtedness or the issuance of bonds of the county for the special purpose of erecting, remodeling, enlarging, or purchasing a hospital or hospitals, the board of commissioners of the county shall proceed at once to appoint from the citizens of the county three trustees from each township in which a hospital or hospitals are to be acquired or erected hereunder, and one trustee from each of the remaining townships in the county, such trustees to be chosen with special reference to their fitness for such office. In the event that a hospital is thereafter acquired or erected hereunder in any of said remaining townships the board of commissioners shall thereupon appoint two additional trustees from such township. The trustees so appointed shall constitute a board of trustees for the hospital or hospitals acquired or erected under the provisions of this article. The first trustees from each township from which there shall be three trustees shall be appointed by the board of commissioners for terms of one, two and three years, respectively. The first trustees from the remaining townships shall be appointed for terms of one, two and three years, respectively, so that the terms of at least one third of the trustees from such remaining townships shall expire each year. As the term of each trustee expires a successor trustee shall be appointed from the same township for a term of three years. Each trustee shall serve until his or her successor is appointed and qualified. No trustee shall succeed himself or herself. Any vacancy in the board of trustees shall be filled by the board of commissioners of the county for the unexpired term. (1945, c. 506, s. 8; 1949, c. 358, s. 5.)

Local Modification. — Pitt: 1949, c. 877, s. 4.

Editor's Note. — The 1949 amendment inserted the words "who shall vote thereon" near the beginning of the section.

§ 131-28.9. Organization of board; bond, compensation and duties of hospital treasurer; annual audit; reimbursement for expenses.—The trustees shall, within ten days after their appointment, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, and by the election of such other officers and committees as they shall deem necessary, including a treasurer for each hospital under the jurisdiction and control of such board, but none of such officers except the hospital treasurers shall be required to give bond. Each hospital treasurer shall give a bond in such amount as shall be fixed by the board of commissioners of the county, and shall receive such compensation, payable solely from hospital income, as shall be determined by the board of hospital trustees. The treasurer for each hospital shall receive all income of such hospital, including all moneys paid for the use of the facilities and services thereof, and shall pay out the same and account therefor as directed by the board of hospital trustees. He shall make a monthly report of his receipts and disbursements to the board of commissioners of the county and the board of hospital trustees. An annual audit shall be made of the receipts and disbursements of each hospital by a certified public accountant selected by the board of commissioners of the county and copies of such audit shall be furnished the board of commissioners of the county and the board of hospital trustees, and a condensed copy of such audit shall be published in a newspaper of general circulation in the county. No trustee shall receive any compensation for services performed by him but he may receive reimbursement, from such hospital funds as the board of hospital trustees shall determine, for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and moneys paid out shall be made under oath by each of such trustees and filed with the board of hospital trustees and allowed by the affirmative vote of all of the trustees present at any meeting of the board. (1945, c. 506, s. 9.)

§ 131-28.10. Board to adopt bylaws, rules and regulations; control of expenditures.—The board of hospital trustees shall make and adopt such bylaws, rules, and regulations for their own guidance and for the government of the hospital or hospitals under their jurisdiction and control as may be deemed expedient for the economic and equitable conduct and operation thereof, not inconsistent with this article or the ordinances of the city or town wherein such hospital or hospitals shall be located. The board of hospital trustees shall have the exclusive control of the expenditure of all moneys provided pursuant to the provisions of this article for the purpose of erecting, remodeling, enlarging, or purchasing hospitals, including the acquisition of necessary land and necessary equipment, and all moneys collected through the operation of such hospitals and all moneys provided for the maintenance and operation thereof, but no moneys provided for the payment of the hospital indebtedness of the county shall be subject to the control of such hospital board. (1945, c. 506, s. 10.)

§ 131-28.11. Appointment and removal of superintendent and other personnel; carrying out intent of article. — The board of hospital trustees shall have power to appoint suitable superintendents or matrons, or both, and necessary assistants, and to fix their compensation, and shall also have power to remove such appointees, and such board shall in general carry out the spirit and intent of this article in establishing and maintaining a county hospital or hospitals, with equal rights to all and special privileges to none. (1945, c. 506, s. 11.)

§ 131-28.12. Meetings of board; quorum; visitation; reports; pecuniary interest in purchase of supplies.—The board of hospital trustees shall hold meetings at least once every three months, and shall keep a complete record of all its proceedings. A majority of the members of the board shall constitute a quorum for the transaction of business. At least two of the trustees shall visit and examine the hospital or hospitals at least twice each month. The board of hospital trustees shall, during the first week in January of each year, file with the board of commissioners of the county a report of its proceedings with reference to such hospital or hospitals, and a statement of all receipts and expenditures during the year, and shall at such times certify the amount necessary in its opinion to maintain and improve each hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for any county hospital, unless the same are purchased by competitive bidding. (1945, c. 506, s. 12.)

§ 131-28.13. Deposit and withdrawal of funds.—All moneys received for the credit of each hospital shall be deposited by the hospital treasurer in a special fund for such hospital, and shall be paid out only upon warrants drawn by such hospital treasurer or other proper officer designated by the board of hospital trustees upon due authorization by such board. (1945, c. 506, s. 13.)

§ 131-28.14. Condemnation proceedings.—If the board of hospital trustees and the owners of any property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board shall report the fact to the board of commissioners of the county, and condemnation proceedings shall be instituted by such board of commissioners and prosecuted in the name of the county under the provisions of law for the condemnation of land for railroads. (1945, c. 506, s. 14.)

§ 131-28.15. Plans for buildings; advertising bids.—No hospital buildings shall be erected, remodeled or enlarged until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1945, c. 506, s. 15.)

§ 131-28.16. Donations and gifts.—Any person, firm, corporation or society desiring to make donations of money, personal property, or real estate for the benefit of any hospital acquired or erected hereunder shall have the right to vest title to the property so donated in the county, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise or bequest of such property. (1945, c. 506, s. 16.)

§ 131-28.17. Persons entitled to benefit of hospital; charges for treatment; exclusion for violation of rules.—Every hospital acquired or constructed under this article shall be for the benefit of the inhabitants of the county and of any person falling sick or being injured or maimed within the limits of the county; but every person using the facilities or services of any such hospital who is not a pauper shall pay a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board of hospital trustees, such hospital or hospitals always being subject to such reasonable rules and regulations as the board may adopt for the purpose of rendering the use of such hospital or hospitals of the greatest benefit to the greatest number. The board of hospital trustees may exclude from the use of any such hospital all persons who shall willfully violate such rules and regulations. Such board may extend the privileges and use of any such hospital to persons residing outside of the county upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1945, c. 506, s. 17.)

§ 131-28.18. Persons and articles subject to rules and regulations.—When such hospital or hospitals are established as county public hospitals the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used therein or brought thereto, shall be subject to such rules and regulations as the board of hospital trustees may prescribe. (1945, c. 506, s. 18.)

§ 131-28.19. Regulation of physicians and nurses. — The board of hospital trustees shall determine the conditions under which the privileges of practice within the hospitals under its jurisdiction and control shall be available to physicians, and the board shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospitals. (1945, c. 506, s. 19.)

§ 131-28.20. Training school for nurses.—The board of hospital trustees may establish and maintain, in connection with and as a part of any hospital under its jurisdiction and control, a training school or training schools for nurses. (1945, c. 506, s. 20.)

§ 131-28.21. Powers granted are additional.—The powers granted by this article are in addition to and not in substitution for existing powers of counties in the State of North Carolina. (1945, c. 506, s. 21.)

§ 131-28.22. Validation of elections.—All elections heretofore called or held for the issuance of county hospital bonds and all elections heretofore held for levying and collecting annually an ad valorem tax for the special purpose of maintaining county hospitals, which could have been held under the provisions of this article had the same then been in effect and operation, are hereby ratified, approved and confirmed, and all county hospital bonds heretofore issued pursuant to any such election are hereby ratified, approved and confirmed. (1945, c. 506, s. 22.)

Article 2B.

County-City Hospital Facilities for the Poor.

§ **131-28.23. Counties authorized to provide facilities in conjunction with certain cities.**—Authority is hereby granted to the board of commissioners of any county in the State now or hereafter having a population of one hundred thousand or over and a city within its borders now or hereafter having population of seventy-five thousand or over to provide adequate hospital facilities for the care of the sick and afflicted poor of such county. The exercise of the authority hereby granted through the contracts herein referred to, and the appropriations and taxes for the construction, installation, and maintenance of such facilities are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly of North Carolina is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county, and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof. The full faith and credit of any such county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the General Assembly of North Carolina is hereby given to the execution thereof and to the levy of a special ad valorem tax not to exceed ten cents (10c) on the one hundred dollars ($100.00) value of property, in addition to other taxes for general purposes authorized by law, for the special purpose of the payment of the amounts to become due thereunder. The board of aldermen of any such city is also authorized to levy, for the purposes herein provided, a special ad valorem tax not to exceed ten cents (10c) on the one hundred dollars ($100.00) value of property, in addition to other taxes for general purposes authorized by law. The term "board of aldermen," as used in this article, shall be deemed to include any governing body of any municipality coming within the provisions of this article by whatever name designated. (1945, c. 516, s. 1.)

§ **131-28.24. Agreement between governing bodies upon plan of hospital care.**—The authority hereby granted shall be exercised only by agreement between the board of commissioners of the county and the board of aldermen of the city upon a plan of hospital care for the sick and afflicted poor of the county as herein provided. Such plan shall be embodied in a resolution, adopted by a majority vote of each board before becoming effective, and may be enlarged, diminished or altered from time to time by a majority vote of each board not inconsistent herewith. The plan shall provide for (a) the time when it shall become effective, (b) the election of a city-county hospital commission to administer the hospitals covered by the plan, (c) the respective financial obligations of the county and the city with respect to the construction of any hospitals covered by the plan and the operation of any hospitals covered by the plan, and (d) such other arrangements, provisions, and details as may be deemed necessary, requisite or proper to provide adequate hospital facilities for the sick and afflicted poor of the county. (1945, c. 516, s. 2.)

§ **131-28.25. Powers and regulations; inclusion of municipal hospital within plan; limitations on payments by county.**—If the governing bodies of any such county and city deem it advisable to include within the plan any existing municipal hospital or any new hospital which the city proposes to erect with the proceeds of a bond issue approved by the registered voters thereof, then in that event, the commissioners of such county are authorized to contract with the city for the construction of additional hospital facilities, over and above those to be paid for by the city with the funds derived from such bond issue and from other sources, for the hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed upon and embodied in said plan by the governing bodies of the county and the city, provided the annual payments by the county to the city toward the cost of constructing such additional hospital facilities shall not exceed fifteen per cent of the total cost thereof, and provided further that the annual deficit, if any, in the operation of such hospital or in the operation of any other hospital covered by the plan for the treatment of the sick and afflicted poor of the county shall be borne and paid by the city and county in such proportion as may be agreed upon by their governing bodies. In no event shall the annual payment of the city exceed two thirds of such annual deficit. In the event a new hospital is constructed as hereinbefore provided, it shall be located within the corporate limits of the city, and the name of the hospital and the site selected and all contracts for the construction thereof shall be approved by a majority vote of the governing boards of the city and county meeting in joint session, each body voting as a unit, but in the event of disagreement the majority vote of the board of aldermen of the city shall prevail. One third of all beds in the hospitals covered by the plan shall be reserved for the treatment of the indigent sick. (1945, c. 516, s. 3.)

§ **131-28.26. City-county hospital commission.**—Following the adoption of the agreement covering a plan of hospitalization for the sick and afflicted poor of the county, the county commissioners and the governing board of the city shall meet in a joint session in the county courthouse and elect a city-county hospital commission, to be composed of nine members, six of whom shall be residents of the city and three of whom shall be residents of other sections of the county. Three members of the commission shall be elected to serve for a term of two years, three for a term of four years, and three for a term of six years, and thereafter three members shall be elected biennially for a term of six years. Vacancies from any cause shall be filled by the two governing bodies meeting in joint session.

The mayor of the participating city shall be chairman and the chairman of the board of commissioners of the county shall be vice-chairman. At the first meeting, the commission shall elect a secretary who need not be a member of the commission. The commission shall meet at least once a month and special meetings may be called by the chairman at such other times as he may designate. It shall be the duty of the chairman to call a special meeting of the commission upon written request of a majority of the members thereof. The secretary shall keep written minutes of all meetings of the commission and report to the governing bodies. The members of the commission shall serve without compensation.

The city-county hospital commission shall make recommendations to the county commissioners of the county and the board of aldermen of the city regarding the operation of any hospital covered by the city-county hospital plan or system and shall discharge such other duties as the county commissioners of the county and the board of aldermen may impose upon the commission. In addition, such commission shall have all powers and discharge all duties now vested in any hospital commission of any such city by the ordinances or charter thereof not inconsistent herewith.

Not later than June first of each year the city-county hospital commission shall prepare and submit to the governing bodies of the county and city a proposed budget for the operation and maintenance of each hospital covered by the plan agreed upon by the governing bodies of the city and county. On or before June fifteenth of each year, the county commissioners and the board of aldermen shall adopt in a joint meeting the budget under which the several hospitals covered by the plan shall operate during the next fiscal year. (1945, c. 516, s. 4.)

§ **131-28.27. Superintendent of hospitals.**—At a joint meeting of the board of commissioners and the board of aldermen, at which the city-county hospital commission is elected, there shall also be elected a superintendent of hospitals to serve for a term of twelve months. The compensation of the superintendent and of the personnel of the several hospitals covered by the plan shall be fixed by the commissioners of the county and the board of aldermen of the city in a joint meeting. The superintendent shall be subject to removal by the commissioners and by the board of aldermen at will in joint meeting, provided two thirds of the membership of both boards vote in favor of such removal.

The superintendent of hospitals shall have supervision of the operation of the hospitals covered by the plan and shall have the powers now prescribed by the ordinances of the city and he shall likewise enforce all rules and regulations prescribed by the governing bodies of the county and the city. (1945, c. 516, s. 5.)

§ **131-28.28. Revenue.**—The board of commissioners of the county and the board of aldermen of the city are hereby respectively authorized and empowered to levy a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10c) on the one hundred dollars ($100.00) value of property annually, to provide hospital care for the sick and afflicted poor of the county and the city. All revenue so derived shall be carried by each governing body as a separate fund and expenditures for such purpose shall be charged respectively against such fund. Other revenues received from the operation of the hospitals covered by the plan shall be carried in the same funds. The funds of the county and the city for the operation and maintenance of such hospital facilities shall be applied by the governing bodies toward the payment of any annual deficit arising from the treatment of the sick and afflicted poor in any of the hospitals covered by the plan agreed upon by the governing bodies, subject to the limitations hereinbefore provided, and shall be disbursed by the finance officer of the city on vouchers approved by the superintendent of hospitals, provided appropriations for such expenditures have been made and a sufficient balance is available. All purchases shall be made through the purchasing department of the city. The portion of the funds charged to the county shall be paid not later than thirty days from the close of each fiscal year to the finance officer of the city, to be applied as hereinbefore provided.

The governing bodies of the county and city meeting in joint session shall set aside each year out of the hospital plan revenues a sum not to exceed ten per cent of the original cost of the hospital plants covered by the plan, including land, buildings and equipment, for future expansion and modernization of buildings and appurtenances, the funds so set aside to be deposited with the sinking fund commission of the city and kept separate by it from other funds handled by it, and the investments of such funds to be governed by the laws pertaining to the city sinking funds. The expenditure of all or any part of said accumulated funds shall be made upon recommendation of the city-county hospital commission to both governing bodies, meeting in joint session..

In anticipation of the annual payments to be made by the county toward the cost of constructing the additional facilities hereinbefore referred to, the city is authorized to advance such additional funds and if necessary to issue its short-term securities for that purpose. If such short-term securities are issued by the city, interest thereon shall be paid by the county. (1945, c. 516, s. 6.)

Article 3.

County Tuberculosis Hospitals.

§ **131-29. Power to establish.**—Any county within the State shall have power and authority at any time to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1917, c. 99, s. 1; C. S., s. 7279.)

Proceedings under Local Act Conflicting with Article. — As to invalid proceedings under local act conflicting with this article, see Armstrong v. Board, 185 N. C. 405, 117 S. E. 388 (1923), distinguishing Proctor v. Board, 182 N. C. 56, 108 S. E. 360 (1921).

§ 131-30. Election for bond issue; special tax.—The board of county commissioners of any county in the State may, by majority vote of the board, or upon petition of one-fourth of the freeholders of the county shall, after thirty days' notice at the courthouse door and publication in one or more newspapers published in the county, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people of the county whether there shall be issued and sold bonds to an amount not to exceed two hundred and fifty thousand dollars, to bear interest at such rate as the board may fix and to be payable, both principal and interest, when and where they may decide, the proceeds of the bonds to be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. If the majority of the qualified voters at said election shall vote in favor of the issuing of such bonds, then the bonds shall be issued and sold by the board and a special tax shall be levied to pay the interest and to provide a sinking fund to pay the bonds at maturity. The board of commissioners are also authorized to levy a special annual tax not to exceed ten cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis. The question of levying such special tax shall be submitted to the qualified voters of such county at an election to be held as hereinbefore provided. In the event the board of commissioners shall order a special election to determine the will of the people of the county upon the question of the issuance of the bonds or the levy of the special maintenance tax as herein provided, they may order a new registration of the qualified voters of the county for said election, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published in said county at least thirty days before the close of the registration books. If both questions are submitted at the same election, only one registration need be ordered. The published notice of registration shall state the days on which the books will be open for registration of voters and the places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before election. The Saturday before the election shall be challenge day. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. (1917, c. 99, s. 2; 1919, c. 159, s. 2; C. S., s. 7280; Ex. Sess. 1924, c. 47; 1925, c. 75; 1927, c. 34, s. 2; 1929, c. 164; 1937, c. 197; 1939, c. 290.)

Editor's Note. — The 1924 amendment inserted the provision for holding a special election. The 1925 and 1927 amendments increased the bond limit. And the 1937 and 1939 amendments increased the maximum tax rate authorized in the third sentence.

§ 131-31. Board of managers; term of office; compensation. — For each hospital so established, the board of county commissioners shall, by a majority vote, elect a board of managers to consist of five members, of whom one shall be a member of said board of commissioners and shall be chairman of said board of managers. None of the remaining four members of said board of managers shall be a member of the board of commissioners. The chairman of said board of managers shall be elected for a term of two years, and the other members of said board of managers shall be elected for terms of four years each: Provided, that at the first election of said board of managers the chairman shall be elected for a term equal to the unexpired portion of his term as a member of the board of commissioners, and of the remaining members of said board of managers one member shall be elected for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years: Provided, also, that any vacancy in said board, occurring at any time, shall be filled by the board of commissioners for the unexpired term. In all counties having a health officer, such health officer, in addition to the five elected members, shall be ex officio a member of such board of managers. Women shall be eligible to said board of managers. The compensation of the members of said board of managers shall be the same as that of the members of the board of commissioners: Provided, that in counties in which the chairman of the board of commissioners receives a fixed salary, and the remaining members of said board are compensated upon the basis of per diem and mileage, the compensation of the members of the board of managers shall be equal to that of the members of the board of commissioners, paid upon a per diem and mileage basis. The chairman of the board of managers shall be entitled to the same compensation as other members of said board, in addition to his compensation as a member of the board of commissioners. The county health officer, however, shall not receive compensation as a member of said board of managers: Provided, that this section shall not affect the present term of office of any member of a board of managers elected prior to the passage of this section, but as to such members this section shall become effective as their present terms of office, respectively, shall expire. (1917, c. 99, s. 4; C. S., s. 7282; 1925, c. 313, s. 1.)

Local Modification. — Guilford: 1945, c. 135; Wake: 1951, c. 1037, s. 1.

Editor's Note. — The 1925 amendment inserted the provisions as to the membership of one of the commissioners, and the proviso as to per diem compensation.

§ **131-32. Powers of board; title to property.**—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees, and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers. No one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers. All property, both real and personal, pertaining to such hospital, shall be vested in the county: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the county in trust according to the terms of such donation, devise, or bequest. Provided, that the board of commissioners, in their discretion, either may appoint the board of managers following the official determination of the election, in which event said board of managers shall have the sole authority as to the selection of a site for such hospital, the purchase of lands therefor, and the erecting and equipping of the buildings for such hospital; or the said board of commissioners may defer the appointment of said board of managers until such hospital is constructed, in which event said board of commissioners shall, themselves, select the site for such hospital, purchase lands therefor, erect and equip, or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained in accordance with this article. (1917, c. 99, s. 5; C. S., s. 7283; 1925, c. 313, s. 2.)

Editor's Note. — The 1925 amendment inserted the provision for the appointment, etc., of a board of managers.

§ **131-33. Contract power; regulations for admission.**—The board of county commissioners, or the board of managers, according to the authority vested in them by the board of county commissioners or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the county maintaining such hospital shall be kept for less than actual cost. The county commissioners of any county may, instead of erecting the institution in the county where the vote is taken, use a part or all of the funds in erecting and maintaining a building or buildings at the State Sanatorium at Montrose, or the county commissioners may in their discretion erect and maintain a tuberculosis hospital in the county where the bonds are issued, and may also use part of the funds to erect and maintain a building or buildings at Montrose, as they may deem best. Before erecting any building or buildings at Montrose the county commissioners shall make due arrangements and enter into the necessary contract or contracts with the board having charge of the State Sanatorium at Montrose. And the board having in charge the State Sanatorium at Montrose is hereby authorized and empowered to make contracts with any county in the State, specifying the terms upon which such building or buildings may be erected and making such arrangements as it may deem wise for the maintenance of such buildings and the care and support of such county patients. In case the board of commissioners of any county, or the people of any county, do not decide to issue bonds for the erection of such hospital, but do decide to levy the special tax provided for in § 131-30, they may make arrangements with the board having in charge the State Sanatorium at Montrose for the maintenance and care of tubercular patients of such county. (1917, c. 99, s. 6; 1919, c. 159, s. 3; C. S., s. 7284; 1921, c. 178; 1925, c. 313, s. 3.)

Article 4.

Joint County Tuberculosis Hospitals.

§ **131-34. Authorization.**—Any group of counties within the State of North Carolina shall have power and authority at any time hereafter to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1925, c. 154, s. 1.)

Local Modification. — Edgecombe, Halifax and Martin: 1927, c. 58.

§ **131-35. Vote on bond issue.**—The boards of commissioners of each such group of counties in North Carolina may, by majority vote of said boards, or upon petition of five per cent (5%) of the freeholders of said counties, shall, after thirty days' notice at the courthouse door of each of the counties and publication in one or more newspapers published in each of said counties, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people in each of the counties in the group whether there shall be issued and sold bonds to an amount not to exceed two hundred thousand dollars ($200,000) for each county in the group, to bear interest at such rate as said boards may fix and to be payable, both principal and interest, when and where they may decide. The proceeds of said bonds shall be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. If the majority of the qualified voters in each county of the group at said election shall vote in favor of the issuing of said bonds, then said bonds shall be issued and sold by said boards and a special tax shall be levied to pay the interest on said bonds and provide a sinking fund to pay said bonds at maturity. Said boards of commissioners are hereby also authorized to levy a special annual tax not to exceed five cents (5c) on the one hundred dollars ($100.00) valuation of property and fifteen cents (15c) on the poll to be used as a maintenance fund for said hospital for tuberculosis. (1925, c. 154, s. 2; 1929, c. 164.)

Local Modification. — Edgecombe, Halifax and Martin: 1927, c. 58.

§ **131-36. Board of managers.** — For each hospital so established there shall be elected a board of managers, consisting of two members from each county in the group and of one member at large. The two members from each county shall be elected by a majority vote of their respective board of county commissioners, and the one member at large shall be elected from any one of the counties in the group at a meeting of and by a majority vote of the combined boards of commissioners of the several counties in the group. The member at large shall hold office for two years and the other members shall hold office for four years where there are only two counties in the group, and for six years where there are more than two counties in the group, unless sooner removed for cause by the combined boards of commissioners of the several counties in the group: Provided, that the commissioners of all the counties of the group at a joint meeting shall determine the length of the term of office of the various members of the board of managers first elected; one member to serve one, two, three and four years, respectively, if there are only two counties in the group; one member to serve one, two, three, four, five and six years, respectively, if there are three counties in the group; one member to serve for one, two, three and four years, respectively, and two members to serve for five and six years, respectively, where there are four counties in the group; one member to serve for one year, and one for two years, and two members for three, four, five and six years, respectively, where there are five counties in the group: Provided, also, that any vacancies in such board may be filled by the boards of county commissioners for the unexpired term, unless the vacancy is for the office of member at large, in which case the vacancy shall be filled for the unexpired term by the commissioners of all the counties of the group at a joint meeting. In all counties having health officers, such health officers shall, in addition to the other members, be ex officio members of such board of managers. Women shall be eligible for election to such board of managers. The compensation for such board shall be the same as that of the county commissioners. (1925, c. 154, s. 4.)

§ **131-37. Authority of board.**—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers; no one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers; all property, both real and personal, pertaining to such hospital shall be vested jointly in the counties of the group: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the counties in the group in trust according to the terms of such donation, devise, or bequest. (1925, c. 154, s. 5.)

§ **131-38. Purchasing property; charges.**—The boards of county commissioners of the group, or the board of managers, according to the authority vested in them by the boards of county commissioners of the group or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the counties maintaining such hospital shall be kept for less than actual cost. (1925, c. 154, s. 6.)

Article 5.

County Tuberculosis Hospitals; Additional Method of Establishment.

§ **131-39. Additional method of establishing; election.**—The board of commissioners for each county in the State shall have power to cause to be held in their county an election wherein this article shall be submitted to the qualified voters of said county for their approval or disapproval. Said election shall be in all respects, as nearly as may be, held and conducted conformably to the rules for the election of members of the General Assembly. The said board of commissioners shall provide registration and polling books, and shall publish due notice of said election. They shall cause a new registration of voters to be made for said election, and shall publish due notice of the time and place for such registration to be made, and of the time when challenges of such registered voters may be made, all of which shall conform as near as may be, to the general laws regulating the election of members of the General Assembly. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). If in said election a majority of the voters of said county registered for said election vote for said county tubercular hospital, then this article and the following provisions thereof shall thenceforth be in full force and effect in said county; but if in said election a majority of the said registered voters shall not vote for said county tubercular hospital, then the provisions of this article shall be in no further force and effect in said county. (1927, c. 208, s. 1; 1929, c. 164.)

§ **131-40. Appointment of trustees; vacancies; terms of office.**—In the event said election shall have been carried in favor of said county tubercular hospital, the board of commissioners for the county in which election shall have been held shall within thirty days after a declaration of such result of such election, appoint a board of trustees for said county tubercular hospital, consisting of twelve residents of said county, three of whom shall be physicians regularly practicing in said county, and three others of said trustees shall be women. Said trustees shall be appointed in four classes, one class to serve for one year, another for two years, another for three years, and the other for four years; thereafter as their successors are appointed or elected, the term of office of such successors, except unexpired vacancies, shall be for four years. The successors of such trustees shall be appointed by the chairman of the board of commissioners for said county, the county superintendent of health, the clerk of the superior court of said county, and the mayor of the municipality constituting the county seat of said county acting jointly, and by a majority vote. Vacancies in the offices of such trustees shall be filled by the same body of public officers last mentioned. (1927, c. 208, s. 2.)

§ **131-41. Meeting for qualification and organization; expenditures; care of property.**—These said trustees shall within ten days after their appointment meet and qualify by taking the oath of civil officers, and organize their board by the election of one of their members as chairman, and one as secretary, and by the election of such other officers as may be necessary. The treasurer of the county for which said trustees are appointed shall be treasurer of the said board of trustees, and such treasurer shall receive and pay out all moneys under the control of said board as directed by it, but shall receive no compensation from said board, and no trustee shall receive any compensation whatsoever for services performed as such trustee. Said board of trustees shall make and adopt such bylaws, rules and regulations for their own guidance and the government of the said hospital, as it may deem proper, not inconsistent with this article. It shall have the control of the expenditure of all moneys collected to the credit of the hospital, including the proceeds from the sale of such bonds, hereinafter mentioned, and said board of trustees shall have the supervision, care and custody of the grounds, buildings and rooms purchased, constructed, leased or set apart for the purposes of such hospital, and they may employ such assistants, including a superintendent and matron and such other employees as they may deem necessary for the operation of said hospital, insofar as funds available for such purposes will permit. (1927, c. 208, s. 3.)

§ **131-42. Counties to issue bonds.**—The board of commissioners for any county in which this article shall have been approved as aforesaid shall issue bonds of said county in an amount not to exceed the principal sum of two hundred fifty thousand dollars ($250,000.00), for the purpose of purchasing a site, constructing the necessary buildings, and equipping said hospital with the necessary equipment. Such bonds shall be payable at such time or times not to exceed forty years from the date thereof, and at such place or places and bear such rate of interest not to exceed six per cent per annum and be of such denominations as the board of commissioners for said county may in its discretion determine. Said bonds shall be sold by the said board of commissioners at public or private sale at not less than par, as said board may determine. Said bonds shall be signed by the chairman of the said board of commissioners, and bear the impressed seal of the said board, attested by the clerk of the said board; the interest coupons shall bear the lithographed or engraved facsimile of the signature of the said clerk of said board. The proceeds of the sale of said bonds as received shall be at once deposited by the said board of commissioners with the treasurer of said county, to the credit of said board of trustees for said county tubercular hospital; the official name of said board of trustees shall be "Board of Trustees for the .... County Tubercular Hospital," the name of the county for which said board is appointed to be inserted in the blank space. (1927, c. 208, s. 4.)

§ **131-43. Special tax for bonds.**—The board of commissioners for any county issuing bonds under this article shall annually levy an ad valorem tax on the taxable property in such county sufficient to pay the interest on said bonds so issued, and provide a sinking fund for the payment of principal thereof, as the same may become due. Said board of commissioners shall further levy annually an additional tax not exceeding five cents on the hundred dollars on taxable property in said county, for the purpose of providing funds sufficient when supplementing other income of said hospital, for the necessary maintenance and operation of said hospital. Said board of commissioners for such county shall also annually levy a sufficient tax to provide a sum equivalent to that expended out of moneys raised by taxes for the maintenance of said hospital, which funds so to be provided shall be disbursed by the board of commissioners for such county in the care of indigent residents of said county ill with diseases other than tuberculosis in other hospitals in such county. (1927, c. 208, s. 5; 1943, c. 543.)

Editor's Note. — The 1943 amendment substituted in the second sentence "one hundred dollars" for "dollar."

§ **131-44. Hospital erected for benefit of residents.**—The hospital established under this article shall be for the benefit of the residents of the county in which it is situated who are or become sick with tuberculosis, but every such resident admitted to said hospital who is not a pauper, shall pay to such board of trustees of said hospital, or such other officers as it may designate, reasonable compensation for occupancy and attendance within said hospital, the amount thereof to be fixed by said board of trustees, and in the event a patient in said hospital is not able to pay in full, charges for treatment, but can pay some part thereof, arrangement may be made accordingly by said board of trustees in its discretion and as it deems right and just. (1927, c. 208, s. 6.)

§ **131-45. This article cumulative of existing powers.**—The powers conferred by this article are conferred in addition to and not in substitution for the existing powers of counties. Any county may at its option proceed either under this article or under any other act conferring similar powers upon such county. (1927, c. 208, s. 7.)

Article 6.

Joint County and Municipal Tuberculosis Hospitals.

§ **131-46. Appropriations from revenue producing enterprises for construction and equipment.**—(a) The board of commissioners of any county and/or the board of commissioners or aldermen of any municipality in such county are hereby authorized and empowered to appropriate in their discretion out of funds not derived from taxes, but from revenue producing enterprises owned by said counties and/or towns or municipalities therein, not to exceed fifty thousand dollars ($50,000.00) of said funds so derived, for the purpose of building and equipping tuberculosis hospitals for the treatment of tuberculosis patients in said counties, towns or municipalities.

(b) The board of commissioners of any county and/or the board of commissioners or aldermen of any town or municipality are hereby authorized and empowered to appropriate in their discretion, from funds not derived from taxation, such sums as may be deemed necessary by said board or boards for the maintenance of tuberculosis hospitals. (1939, c. 293, s. 1.)

§ **131-47. Determination of name of hospital.**—The name of any hospital established under the provisions of this article shall be determined by the board of managers to be hereinafter provided for. (1939, c. 293, s. 2.)

§ **131-48. Boards of managers for hospitals.**—(a) For the governing and management of such hospitals, there shall be created a board of five managers. One of such board shall be elected by the county commissioners from its membership. One member of such board shall be elected by the town commissioners from its membership. The remaining three members of the board of managers shall be elected by joint vote of the boards of county and town commissioners: Provided, however, two of such remaining three members shall be licensed physicians elected by said boards of commissioners from a list of at least five nominations made by the county medical society, if there be one: Provided, further, if any such hospital be a sole enterprise of a county, or city or town, then the entire membership of the board of managers shall be elected by the board of commissioners of the governmental unit conducting such enterprise.

(b) The board of managers shall make a monthly report to the board of county and/or town commissioners and shall, on or before the first day of June of each year, file a budget with the county and/or town accountant. (1939, c. 293, s. 3.)

§ **131-49. Officers, etc.**—(a) The said board of managers shall, after their appointment, meet and elect their chairman, together with a secretary and treasurer, and such other officers, employees and attendants as it may deem necessary for the administration and government of patients. The chairman of the board, as chairman, shall hold office for two years. The said secretary and treasurer, before entering upon his duties, shall give bond to the board of commissioners of the county and/or the board of commissioners of the town in an amount fixed by the said board of managers, conditioned for the faithful discharge of his official duties. The said secretary and treasurer, in the discretion of the said managers, shall be allowed and paid an amount as the said managers shall deem adequate compensation for his services as secretary and treasurer. The said board of managers, subject to the approval of governing bodies of the governmental unit maintaining such hospital, shall adopt such bylaws, rules and regulations for the governing of said tuberculosis hospital as may be expedient and in conformity with law. The said board of managers shall have control of all monies and expenditures collected by and placed to the credit of said managers of said tuberculosis hospital. All monies shall be paid out by the secretary and treasurer upon authenticated requisition of the board of managers through its president. With the consent of the said board of commissioners of the county and/or the board of commissioners of the town the said board of managers may establish, erect and maintain a tuberculosis hospital upon real estate secured or obtained by gift or purchase. The said board of managers may fix the compensation for all officers, employees and assistants and shall have power to remove such officers, employees or assistants whenever it is deemed advisable by said board of managers. The title to all property, both real and personal, given, conveyed or devised, shall be held by the county and/or town building the said hospital: Provided, however, that any donations, bequests or devises made for the use of such hospital shall be held by the county and/or town in trust according to the terms of such donations, devises or bequests. The board of managers shall have power to make contracts, to formulate, change and alter rules and regulations and government of patients and to do all things reasonable, incidental and necessary in the operation of a tuberculosis hospital.

(b) The board of commissioners of the county and/or the board of commissioners of the town or municipality may defer the appointment of said board of managers until such hospital is constructed, in which event the said board of commissioners of the county and/or the board of commissioners of the town or municipality shall itself select the site for such hospital, purchase lands therefor, erect and equip or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained. (1939, c. 293, s. 4.)

§ **131-50. Terms of office of members elected from local boards; county health officer to be ex officio member of board.**—Membership on the board of managers of members of the board elected from boards of town or county commissioners shall coincide with their term of office as such commissioners; but shall not exceed two years. The remaining three members of the board of managers shall be elected for a term of four years each. In all counties having a health officer, such health officer, in addition to the five elective members, shall be ex officio member of such board of managers, but shall have no vote except in case of a tie. Women shall be eligible to the board of managers. The members of the board of managers shall receive no compensation. Any vacancy in said board occurring at any time shall be filled by the board or boards of commissioners making the original appointment. (1939, c. 293, s. 5.)

§ **131-51. Contracts between local units as to prorating expenses.**— Counties and towns or municipalities may contract and bargain with each other with respect to prorating between said counties, towns or municipalities the expense of the erection of tuberculosis hospitals or the maintaining thereof. (1939, c. 293, s. 6.)

Article 7.

State Sanatorium for Tuberculosis.

§ **131-52. Directors of State sanatorium for tuberculosis.**—The body politic and corporate existing under the name and style of the "North Carolina Sanatorium for the Treatment of Tuberculosis" shall be controlled and managed by a board of directors appointed as provided for in §§ 131-62, 131-63, and

131-64, who shall serve until their successors are appointed and qualified according to law. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 1; C. S., s. 7172; 1923, c. 96; 1925, c. 306, ss. 12, 13, 14; 1935, c. 91, ss. 2, 3, 4; 1935, c. 138, ss. 1, 2.)

Cross References. — See § 131-61 et seq. As to effect on prior law, see note to § 130-12.

Editor's Note.—Prior to the 1923 amendment control was in the State Board of Health.

§ **131-53. Powers of directors; election of officers.**—The North Carolina Sanatorium for the Treatment of Tuberculosis is hereby empowered and authorized to elect and employ such officials and to pay such fees and salaries (provided the appropriation is not exceeded) as the directors shall find necessary for the proper management and maintenance of the institution; the directors shall determine the qualifications for admission of those applying as patients to the institution; the directors shall make all such bylaws and regulations for the government of the said institution as shall be necessary, among which shall be such as shall make the institution as nearly self-supporting as shall be consistent with the purpose of its creation; and the directors shall do such other things as seem reasonably necessary and incident to the proper management and maintenance of the institution. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 2; C. S., s. 7173.)

§ **131-54. Indigent patients; recovery of charges from those able to pay.**—The said directors in determining the qualifications for admission for those applying as patients to the institution and in making bylaws and regulations for the governing therein shall not provide or make any bylaw, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patients, shall be received without regard to their indigent condition; but the directors of said institution shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such bylaws and regulations as shall most equitably carry out the directions contained in § 131-53. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said directors are authorized and empowered to institute an action in the name of the said Sanatorium in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars ($200), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the provisions contained in § 131-60. Provided, that nothing herein contained shall permit the admission of indigent patients to the North Carolina Sanatorium for the Treatment of Tuberculosis, established under § 131-52 et seq., nor to the Western North Carolina Sanatorium for the Treatment of Tuberculosis, established under §§ 131-61 to 131-75, unless and until the person applying for admission to either of said institutions shall have acquired a settlement in this State, and no settlement shall be deemed to have been acquired by such applicant until he or she has resided continuously within this State for a period of three years prior to the application for admission thereto. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332.)

Cross References. — As to care of tubercular prisoners, see § 130-226 et seq.

Editor's Note. — The 1925 amendment added the first proviso, and the 1939 amendment added the second.

§ 131-55. Bureau for tuberculosis, register of tuberculous persons.—The directors shall equip, operate, and maintain a bureau for tuberculosis, located in their office in Raleigh, to which bureau the reports of cases of tuberculosis, as hereinafter provided, shall be made; and the bureau of tuberculosis shall keep a register of all persons in this State known to be afflicted with tuberculosis. The bureau shall have exclusive control of such register and shall not permit the inspection thereof, nor disclose any of its personal particulars, except to representatives of municipal or county governments, the State government, or organizations, orders, churches, or corporations interested in and contemplating making financial provision in the institution for the care and treatment of afflicted citizens or members of their respective organizations, orders, churches, or corporations. (Ex. Sess. 1913, c. 40, s. 3; C. S., s. 7174.)

§ 131-56. Bureau to maintain correspondence school.—The bureau of tuberculosis shall develop and maintain a correspondence school with those of the State's tuberculous population, to the end that the tuberculous population of this State shall be properly advised and directed both as to methods for obtaining cures and as to methods for preventing the spread of the disease to other persons. (Ex. Sess. 1913, c. 40, s. 4; C. S., s. 7175.)

§ 131-57. Cases of tuberculosis reported to bureau.—All physicians and the executive officers of every private or public hospital, institution for the treatment of disease, or dispensary shall report, on blank forms and in accordance with the instructions of the bureau of tuberculosis, the names and other particulars of all persons afflicted with tuberculosis whom they are called upon to examine or treat or who are to be examined or treated in the hospital, institution, or dispensary of which he or she is the executive head, within seven days after the disease is recognized by such physician or executive officer. Any violation of this section shall be a misdemeanor and subject to a fine of not less than ten dollars nor more than one hundred dollars, and the judge, in addition to imposing the said fine, may, upon the evidence produced in the trial or upon such further evidence as may be produced before him, find and cause to be entered upon the records of the court that the physician deliberately and falsely diagnosed the disease, tuberculosis, as some other disease in order to avoid the requirements of this section, and the North Carolina Board of Medical Examiners upon such record shall revoke the license of such physician. Nothing in this section shall abrogate the rights and powers of municipalities and counties to require the reporting of cases of tuberculosis by physicians to the local authorities; but municipalities and counties may, when desired, in lieu of such reports by physicians, call upon the bureau of tuberculosis for notification of cases of tuberculosis reported to the bureau from the municipality or county. (Ex. Sess. 1913, c. 40, s. 5; C. S., s. 7176.)

§ 131-58. Directors may receive gifts for sanatorium.—The directors shall be empowered to receive or accept the gifts or donations for the benefit of the State sanatorium, and the directors shall, in their discretion, use the same for carrying out the purpose for which the sanatorium is established. (1907, c. 964, s. 14; Ex. Sess. 1913, c. 40, s. 6; C. S., s. 7177.)

§ 131-59. Pay of directors.—Each director shall be entitled to receive, as compensation and expenses, the sums authorized in the biennial appropriations acts. (1907, c. 964, s. 15; Ex. Sess. 1913, c. 40, s. 7; C. S., s. 7178.)

§ 131-60. Indigent tuberculous to be treated at State sanatorium.—Any city or town in the State of North Carolina, through its board of aldermen, town council, or other governing body, and any county in the State, through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in, and who is a bona fide citizen of, said city, town, or county, at the North Carolina Sanatorium for the Treatment of Tuberculosis, and pay therefor to the North Carolina Sanatorium for the Treatment of Tuberculosis an amount which shall not be more than one dollar per day per patient. (1915, c. 181, s. 1; C. S., s. 7179.)

Article 8.

Western North Carolina Sanatorium.

§ **131-61. Tubercular sanatorium established in western North Carolina.**—There shall be established in western North Carolina in the manner hereinafter set out a sanatorium for the treatment of persons afflicted with tuberculosis. (1935, c. 91, s. 1.)

§ **131-62. Control of both tubercular sanatoriums vested in one board.**—Control of said sanatorium and the control of the "North Carolina Sanatorium for the Treatment of Tuberculosis" established under the provisions of § 131-52 et seq., shall be vested in a board of directors composed of twelve members to be appointed by the Governor of North Carolina and approved by the State Senate of the session of the General Assembly of one thousand nine hundred and thirty-five. (1935, c. 91, s. 2; 1935, c. 138, s. 1.)

§ **131-63. Terms of directors; ex officio director.**—The said board of directors shall be divided into three classes of four directors each, the first class to serve for a period of two years, the second class for a period of four years and the third class for a period of six years, and at the expiration of the terms of the several classes, shall be appointed for a period of six years. The secretary of the North Carolina State Board of Health shall be ex officio a member of the board of directors. (1935, c. 91, s. 3; 1935, c. 138, s. 2.)

§ **131-64. Vacancy appointments.** — In case of a vacancy or vacancies in the board of directors for any cause, their successor or successors shall be appointed by the Governor, and their appointment will be reported to the next succeeding session of the Senate of the General Assembly of North Carolina for confirmation. (1935, c. 91, s. 4.)

§ **131-65. Directors incorporated.**—The said board of directors shall be, and they are hereby constituted a body politic and corporate, under the name and style of the "Western North Carolina Sanatorium for the Treatment of Tuberculosis," and upon them, as such, are hereby conferred all the duties, powers, privileges and obligations incident to bodies corporate. (1935, c. 91, s. 5.)

§ **131-66. Organization of directors; acquisition of site; appropriation.**—Said board of directors are hereby given full power and authority to meet and organize and from their number select a chairman to purchase a site or sites in Western North Carolina, to purchase, renovate, remodel or erect buildings and provide such apparatus and equipment as may be necessary to establish said sanatorium and prepare it for the reception of patients. (1935, c. 91, s. 6.)

§ **131-67. Superintendent.**—The board of directors shall have the power to elect a superintendent and prescribe his duties. The said superintendent shall be a skilled physician, trained and experienced in the treatment of tuberculosis, of good moral character, and good business habits, and otherwise qualified to discharge the duties of his office. He shall hold office for a period of two years from and after the date of his election, unless sooner removed therefrom by the board for incompetence or misconduct in office, and shall keep a record of his transactions and duly enter the same in a book or books for that purpose. (1935, c. 91, s. 7.)

§ **131-68. Subordinate officers and employees.**—Said superintendent shall employ such subordinate officers and employees of said sanatorium as may be necessary, and fix their compensation, subject to the approval of said board, and within the appropriation made to said institution; the said superintendent shall have the power to discharge any of the employees for incompetence or misconduct in office, and his proceedings in regard to any act of this character shall be reported to the said board of directors. (1935, c. 91, s. 8.)

§ **131-69. Reports of superintendent; board meetings; reports to legislature.**—The superintendent shall make monthly reports to the chairman of the board of directors, clearly setting forth the conditions and workings of the institution, and upon receipt of said report, said chairman shall have the authority to convene said board if, in his discretion, he deems it necessary to do so. Said superintendent shall make a detailed report of the conditions and workings of the institution every three months to the board of directors, and he shall annually make a detailed report to the Governor of North Carolina. The board of directors shall be required to hold meetings of their board every three months or oftener if the chairman of said board shall call them together, and the said board shall be required to make biennial reports of the conditions and workings of the hospital to the Governor and General Assembly. (1935, c. 91, s. 9.)

§ **131-70. Executive committee.**—The board of directors shall at their first meeting select from their number an executive committee composed of the chairman of said board and two other members, who, in the absence of the board of directors, shall have the direction of the affairs of said hospital. The successors to the members of the executive committee and the manner and time of their election shall be provided by the bylaws and regulations made for the said institution. (1935, c. 91, s. 10.)

§ **131-71. Bylaws and regulations.**—The board of directors shall make all bylaws and regulations for the government of said institution as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purpose of its creation. (1935, c. 91, s. 11.)

§ **131-72. Gifts and grants from governments or agencies, bond issues.**—In addition to the powers generally granted to bodies corporate in North Carolina, the "Western North Carolina Sanatorium for the Treatment of Tuberculosis" shall have and is hereby granted authority to receive gift or grant from the United States government or any other agency or government, and shall have the right by vote of the board of directors, approved by the Treasurer of the State of North Carolina, to issue bonds of said institution payable solely out of the receipts or revenues of any undertaking engaged in or undertaken by said board for which said bonds were issued, but shall not have the right to pledge any property of the institution or to make said bonds an obligation of said institution further than the revenue derived from the projects for which the bonds were issued, and said bonds so issued shall not be a charge upon the general property of the Western North Carolina Sanatorium for the Treatment of Tuberculosis, nor any obligation of the State of North Carolina. (1935, c. 91, s. 12.)

§ **131-73. State Treasurer as treasurer of sanatorium.**—The Treasurer of the State of North Carolina shall be ex officio treasurer of said corporation and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1935, c. 91, s. 13.)

§ **131-74. Gifts and donations for benefit of sanatorium.**—The said board of directors shall be empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1935, c. 91, s. 16.)

§ **131-75. Pay of directors.**—Each member of the board of directors shall be entitled to receive as compensation and expenses the sums fixed by the biennial appropriations acts. (1935, c. 91, s. 17.)

Article 9.

Eastern North Carolina Sanatorium.

§ **131-76. Establishment of Eastern North Carolina Sanatorium for Treatment of Tuberculosis.** — There shall be established in eastern North Carolina, in the manner hereinafter set out, a sanatorium for the treatment of persons afflicted with tuberculosis, to be known as the "Eastern North Carolina Sanatorium for the Treatment of Tuberculosis." (1939, c. 325, s. 1.)

§ **131-77. Control of sanatorium by board of directors.**—The control of said sanatorium authorized by the provisions of this article shall be vested in the board of directors appointed by the Governor of North Carolina under the provisions of § 131-62 and their successors in office. (1939, c. 325, s. 2.)

§ **131-78. Powers of directors as to erection, organization, operation, etc., of sanatorium.**—The said board of directors are hereby given full power and authority, subject to the provisions of this article, to erect, organize, operate, supervise, manage and maintain the said Eastern North Carolina Sanatorium for the Treatment of Tuberculosis, and there is hereby conferred upon the said board with respect to such sanatorium the same duties, powers, privileges, authority and obligations which the said board now has in connection with the operation and management of the North Carolina Sanatorium for the Treatment of Tuberculosis and the Western North Carolina Sanatorium for the Treatment of Tuberculosis, including the power to elect a superintendent and prescribe his duties, and to do all things needful in connection with the erection, operation, management and control of such sanatorium. (1939, c. 325, s. 3.)

Cross Reference. — As to bonds for construction of Eastern North Carolina Sanatorium, see article 6, paragraph 35, of chapter 142.

§ **131-79. Bylaws and regulations.** — The said board of directors shall make all bylaws and regulations for the government of said sanatorium as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purposes of its creation. (1939, c. 325, s. 5.)

§ **131-80. State Treasurer to act as ex officio treasurer of sanatorium.**—The Treasurer of the State of North Carolina shall be ex officio treasurer of said sanatorium and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1939, c. 325, s. 6.)

§ **131-81. Gifts and donations.**—The said board of directors are empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1939, c. 325, s. 12.)

§ **131-82. Compensation of directors.**—Each member of the board of directors while engaged in attending to the affairs of said sanatorium shall be entitled to receive as compensation the sums fixed by the biennial appropriations acts. (1939, c. 325, s. 13.)

Article 10.

Funds of Deceased Inmates.

§ **131-83. Applied to debts due by such inmates to such hospitals or institutions.**—Whenever any funds shall be placed or deposited with the officials of any State hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such State hospital or other charitable institution or leaves such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the board of directors or trustees of such State hospital or other charitable institution are hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in their hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said State hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid out and applied as may be by law required. (1933, c. 352, s. 1.)

Article 11.

Sanatorium for Tubercular Prisoners.

§ **131-84. Establishment of sanatorium; power and authority of directors.**—There shall be established at, or as near to as feasible, the North Carolina Sanatorium for the Treatment of Tuberculosis, a sanatorium for the treatment of tubercular prisoners or convicts. The board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis shall have the same authority and power over said sanatorium as they have over the North Carolina Sanatorium for the Treatment of Tuberculosis. (1923, c. 96; 1923, c. 127, s. 2; C. S., s. 7220(a).)

Editor's Note.—See 1 N. C. Law Rev. 269.

§ **131-85. Reports from county physicians or health officers; history of case, etc.**—The county physician or county health officer of the various counties of the State who has examined any prisoner, or convict upon the public roads, and has pronounced him to be affected with tuberculosis, is required to report such case to the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis, giving a history of the same and such other facts as the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis may determine in its rules and regulations. (1923, c. 127, s. 3; C. S., s. 7220(b).)

§ **131-86. Physician at State Prison and convict camp.**—The physician in charge of the State Prison or any particular convict camp of State prisoners shall make similar reports under similar rules and regulations to the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis of all State prisoners who upon examination by him have been determined to be affected with tuberculosis. (1923, c. 127, s. 4; C. S., s. 7220(c).)

§ **131-87. Examination by directors of sanatorium; transfer to sanatorium.**—The board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis, upon receiving such reports, shall examine into the condition of these prisoners or convicts, and, if it is determined that such condition justifies it, shall direct their transfer from either county authorities, if a county prisoner, or the State Prison, if a State prisoner, to the sanatorium herein provided. The cost of such transfer, if it is a county prisoner, shall be paid by the county from which he is transferred; if a State prisoner, the cost shall be paid by the State Prison. If a tuberculous prisoner is thus transferred to the sanatorium, the county from which he is sent shall, upon notice from the sanatorium that the prisoner has recovered or is in such condition that it would be safe to return him to the county, within five days after such notice, send for such prisoner and return him to the county from which he was committed. Any failure on the part of the county to send for such prisoner as herein provided after such notice shall render the county liable for the expenses of maintaining the prisoner. (1923, c. 127, s. 5; C. S., s. 7220(d); 1927, c. 127.)

§ **131-88. Guarding and disciplining of prisoners.**—The prison division of the State Highway and Public Works Commission shall have the same powers, duties and responsibilities in the guarding and disciplining of tubercular prisoners or convicts as it now has as to other prisoners and inmates under its supervision and control. (1923, c. 127, s. 6; C. S., s. 7220(e); 1949, c. 1136.)

Editor's Note. — The 1949 amendment rewrote this section.

§ **131-89. Feeding prison staff; medical and dietetic treatment and care of convicts.**—The North Carolina Sanatorium for the Treatment of Tuberculosis shall provide food for the prison staff and have the same duties and responsibilities in providing medical and dietetic treatment and care of the inmates of said sanatorium for the treatment of tubercular prisoners or convicts as it had prior to the passage of this section. (1923, c. 127, s. 1; C. S., s. 7220(f); 1949, c. 1136.)

Editor's Note. — This section was rewritten by the 1949 amendment.

ARTICLE 12.

Hospital Authorities Law.

§ **131-90. Short title.**—This article may be referred to as the "Hospital Authorities Law." (1943, c. 780, s. 1.)

Editor's Note. — For comment on this article, see 21 N. C. Law Rev. 354.

§ **131-91. Finding and declaration of necessity.**—It is hereby declared that conditions resulting from the concentration of population in various cities and towns of the State having a population of more than seventy-five thousand inhabitants require the construction, maintenance and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various cities and towns of the State having a population of more than seventy-five thousand inhabitants, there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the State and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities and towns; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that adequate hospital and medical facilities and care be provided in such concentrated centers of population in order to care for and protect the health and public welfare; and the necessity in the public interest for the provision hereinafter enacted is hereby declared as a matter of legislative determination. (1943, c. 780, s. 2.)

§ **131-92. Definitions.** — The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "hospital authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than seventy-five thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) "Municipality" shall mean any county, city, town or incorporated village, other than the city as defined above, which is located within or partially within the territorial boundaries of an authority.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the State of North Carolina.

(9) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Hospital project" shall include all real and personal property, buildings and improvements, officers, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to provide adequate hospital facilities and medical care for concentrated centers of population, including persons of low income. The term "hospital project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this article.

(12) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(13) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(14) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(15) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a hospital project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority. (1943, c. 780, s. 3.)

§ **131-93. Creation of authority.**—If the council of any city in the State having a population of more than seventy-five thousand according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate hospital facilities and medical accommodations from the operations of private enterprises in the city and said surrounding area; and/or

(2) That the public health and welfare, including the health and welfare of persons of low income in the city and said surrounding area, require the construction, maintenance or operation of public hospital facilities for the inhabitants thereof; the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, eighteen commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital): (1) That the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (2) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the hospital authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location and the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1943, c. 780, s. 4.)

§ 131-94. Appointment, qualifications, and tenure of commissioners.—An authority shall consist of eighteen commissioners appointed by the mayor and he shall designate the first chairman.

One-third of the commissioners who are first appointed shall be designated by the mayor to serve for terms of four years, one-third to serve for terms of eight years, and one-third to serve for terms of twelve years respectively from the date of their appointment. Thereafter, the term of office shall be three years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of a vacancy or vacancies in the membership of the board by expiration of term of office or otherwise, the remaining members of the board shall submit to the mayor nominations for appointments. The mayor may successively require any number of additional nominations, and shall have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1943, c. 780, s. 5.)

§ 131-95. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1943, c. 780, s. 6.)

§ 131-96. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any hospital project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any hospital project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1943, c. 780, s. 7.)

§ 131-97. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon said commissioner if mailed to him at his last known address as same appears upon the records of the authority.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1943, c. 780, s. 8.)

§ **131-98. Powers and authority.**—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into hospital, medical and health conditions and into the means and methods of improving such conditions; to determine where inadequate hospital and medical facilities exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city and area, including persons of low income in such city and area; to prepare, carry out and operate hospital projects; to provide and operate outpatient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers; to provide teaching and instruction programs and schools for medical students, internes, physicians and nurses; to provide and maintain continuous resident physician and interne medical services; to appoint an administrator, a superintendent or matron, and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees; to adopt bylaws for the conduct of its business; to adopt necessary rules and regulations for the government of the authority and its employees; to enter into contracts for necessary supplies, equipment or services incident to the operation of its business; to appoint such committees or subcommittees as it shall deem advisable, and fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospital and all departments thereof; to accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations; to determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital; to establish and maintain a training school for nurses; to make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, the hospital; to determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves; to maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases; to provide for the construction, reconstruction, improvement, alteration or repair of any hospital project or any part thereof; to take over by purchase, lease or otherwise any hospital project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a hospital project, or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or a government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivision and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital projects and to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital project and to establish and revise the rents or charges therefor; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific hospital project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state. (1943, c. 780, s. 9.)

§ **131-99. Eminent domain.**—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Sections 40-11 to 40-29.

(b) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government or to any religious or charitable corporation may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1943, c. 780, s. 10.)

§ 131-100. Zoning and building laws.—All hospital projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital project is situated. (1943, c. 780, s. 11.)

§ 131-101. Types of bonds.—The authority shall have power and is hereby authorized from time to time in its discretion to issue for the purpose only of constructing, furnishing and equipping new buildings or additions to existing buildings:

(a) Bonds on which the principal and interest are payable exclusively from the income and revenues of the project constructed, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipment thereof, provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated hospital project or projects, and if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues from such designated hospital project or projects.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the State and neither the State nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute. (1943, c. 780, s. 12.)

§ 131-102. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semiannually, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds shall be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York, or in the city of Chicago, Illinois, and; provided that if no bid is received upon such notice which is a legal bid and legally acceptable under such notice, then and in that event the bonds may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1943, c. 780, s. 13.)

§ **131-103. Provisions of bonds, trust indentures, and mortgages.**— In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations herein imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital project or any part thereof, or with respect to limitations on its right to undertake additional hospital projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant as to the use of any or all of its property, real or personal.

(11) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any hospital project or projects or parts thereof; (c) any moneys held for the payment of the costs of operation and maintenance of any such hospital projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and (e) any moneys held for any other reserve or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(14) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(15) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(16) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(17) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(18) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(19) To covenant to surrender possession of all or any part of any hospital project or projects the revenue from which has been pledged or mortgaged for the purpose of constructing, furnishing, and equipping new buildings or additions to existing buildings as provided for in this article upon the happening of any event of default (as defined in the contract) and to vest in an obligee the right without judicial proceeding to take possession and to use, operate, manage and control such hospital projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(20) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(21) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(22) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government of any purchaser of the bonds of the authority may reasonably require.

(23) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof; and provided that the authority may not pledge or mortgage the revenue from any project excepting one newly constructed, furnished and equipped in whole or in part with funds derived or to be derived from the sale of bonds secured by such pledge or mortgage. (1943, c. 780, s. 14.)

§ **131-104. Remedies of an obligee of authority.** — An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority. (1943, c. 780, s. 15.)

§ **131-105. Additional remedies conferrable by mortgage or trust indenture.**—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital project of the authority or any part or parts thereof, constructed, equipped and furnished in whole or in part from funds derived or to be derived in whole or in part from the sale of bonds secured by the pledge or mortgage of the revenues from such property. If such receiver be appointed, he may enter and take possession of such hospital project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1943, c. 780, s. 16.)

§ **131-106. Remedies cumulative.**—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1943, c. 780, s. 17.)

§ **131-107. Limitations on remedies of obligee.**—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. (1943, c. 780, s. 18.)

§ **131-108. Contracts with federal government.**—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any hospital project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a hospital project, to take over or lease or manage any hospital project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such hospital project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any hospital project which the authority is empowered by this article to undertake. (1943, c. 780, s. 19.)

§ **131-109. Security for funds deposited by authority.**—The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or (2) by any securities in which trustees, guardians, executors, administrators and others acting in a fiduciary capacity may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1943, c. 780, s. 20.)

§ **131-110. Tax exemptions.** — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1943, c. 780, s. 21.)

§ **131-111. Reports.** — The authority shall at least once a year file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1943, c. 780, s. 22.)

§ **131-112. Certificate of public convenience and necessity prerequisite to exercise of power of eminent domain; powers of Utilities Commission.**—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall as near as may be follow the proceedings now provided by law for obtaining such a certificate under the Motor Vehicle Carrier Act, and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1943, c. 780, s. 23.)

§ **131-113. Exemption from the Local Government Act, and from the County Fiscal Control Act.**—The authority shall be exempt from the operation and provisions of §§ 159-1 et seq., and 160-409 to 160-412, known as the "Local Government Act," and the amendments thereto and from §§ 153-114 to 153-141, known as the "County Fiscal Control Act," and the amendments thereto. (1943, c. 780, s. 24.)

§ **131-114. Appropriations by city and county.**—The governing body of any city or county in which the authority is located may appropriate each year, not exceeding five per cent of its general fund for the improvement, maintenance or operation of any public hospital or hospital project constructed, maintained, or operated by or to be constructed, maintained or operated by an authority, and moneys so appropriated and paid to a hospital authority by a city or municipality shall be deemed a necessary expense of such city or municipality. (1943, c. 780, s. 25.)

§ **131-115. Conveyance, lease or transfers of property by a city or municipality to an authority.**—Any city or municipality in order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within the territorial boundaries of which such city or municipality is wholly or partly located, any real, personal or mixed property including, but not limited to, any existing hospital or hospital project as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital project, and in connection with any such transaction the authority involved may accept such lease, transfer, assignment and conveyance and bind itself to the performance and observation of any agreements and conditions attached thereto. (1943, c. 780, s. 26.)

§ **131-116. Article controlling.**—Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling, provided that nothing in this article shall prevent any municipality from establishing, equipping, and operating a hospital or hospitals or improving or extending existing hospitals and hospital facilities under the provisions of its charter or any general law other than this article. (1943, c. 780, s. 28.)

Local Modification. — Craven and city of New Bern, 1943, c. 780, s. 29; Wayne and city of Goldsboro: 1947, c. 969.

§ **131-116.1. Article applicable to city of High Point.**—All the provisions of this article shall apply to the city of High Point, Guilford County, North Carolina, as fully as if the population of such city exceeded seventy-five thousand (75,000) inhabitants. (1947, c. 349.)

ARTICLE 13.

Medical Care Commission and Program of Hospital Care.

§ **131-117. North Carolina Medical Care Commission.**—There is hereby created a State agency to be known as "The North Carolina Medical Care Commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the Medical Society of the State of North Carolina; one member by the North Carolina Hospital Association; one member by the North Carolina Dental Society; one member by the North Carolina Nurses' Association; one member by the North Carolina Pharmaceutical Association, and one member by the Duke Foundation, for appointment by the Governor.

Ten members of said Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said Commission, the Governor shall designate the term for which each member is appointed. Four of said members shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the Governor for the unexpired term. The Commissioner of Public Welfare, and the secretary of the State Board of Health shall be ex officio members of the Commission, without voting power.

The Commission shall elect, with the approval of the Governor, a chairman and a vice-chairman. All members, except the Commissioner of Public Welfare, and the secretary of the State Board of Health shall receive a per diem of seven dollars ($7.00) and necessary travel expenses. (1945, c. 1096.)

§ **131-118. Commission authorized to employ executive secretary.**— The North Carolina Medical Care Commission is authorized and empowered to employ, subject to the approval of the Governor, an executive secretary, and to determine his or her salary under the provisions of the Personnel Act. The executive secretary may employ such additional persons as may be required to carry out the provisions of this article, subject to approval of the Commission, and the provisions of the Personnel Act. Office space for the Commission shall be provided by the Board of Public Buildings and Grounds, in Raleigh. (1945, c. 1096.)

§ **131-119. Contribution for indigent patients.** — The North Carolina Medical Care Commission, in accordance with rules and regulations promulgated by the Commission, is hereby authorized and empowered to contribute not exceeding one dollar and fifty cents ($1.50) per day for each indigent patient hospitalized in any hospital approved by it, excluding patients eligible for payments for medical care in behalf of needy aged individuals, in behalf of a dependent child or dependent children and in behalf of the permanently and totally disabled. The balance of the costs remaining after the contribution made by the North Carolina Medical Care Commission may be provided by the county or city having responsibility for the care of such indigent patient, or from other sources. The Commission shall promulgate rules and regulations for determining the indigency of the persons hospitalized and the basis upon which hospitals and health centers shall qualify to receive the benefits of this section.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund to the North Carolina Medical Care Commission for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, the sum of five hundred thousand dollars ($500,000.00); and for the fiscal year ending June thirtieth, one thousand nine hundred and forty-seven, the sum of five hundred thousand dollars ($500,000.00), provided that the benefits of this section shall apply only to hospitals publicly owned, or operated by charitable, nonprofit, nonstock corporations, and on and after July 1st, 1949, the benefits of this section shall apply only to hospitals publicly owned, or owned and operated by charitable, nonprofit, nonstock corporations, and to such privately owned and operated hospitals as may be approved by the North Carolina Medical Care Commission; and provided further that these appropriations provided in this section shall not be available until all provisions of section twenty-three and one-half of the committee substitute for house bill number eleven, the general appropriations bill of one thousand nine hundred and forty-five, relating to the emergency salary for the public school teachers and State employees shall have been completely and fully provided for. (1945, c. 1096; 1947, c. 933, s. 1; 1951, c. 389; 1951, c. 1098, s. 1.)

Editor's Note. — The 1947 amendment struck out the words "owned and" formerly appearing before the words "operated by charitable" near the middle of the second paragraph. It also inserted in said paragraph the provision as to benefits on and after July 1, 1949.

The first 1951 amendment inserted in the second paragraph the words "and to such privately owned and operated hospitals as may be approved by the North Carolina Medical Care Commission." The second 1951 amendment rewrote the first sentence.

§ **131-120. Construction and enlargement of local hospitals.** — The North Carolina Medical Care Commission is hereby authorized and empowered to begin immediate surveys of each county in the State to determine:

(a) The hospital needs of the county or area;

(b) The economic ability of the county or area to support adequate hospital service;

(c) What assistance by the State, if any, is necessary to supplement all other available funds, to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers, and necessary equipment to provide adequate hospital service for the citizens of the county or area; and to report this information, together with its recommendations, to the Governor, who shall transmit this report to the next session of the General Assembly for such legislative action as it may deem necessary to effectuate an adequate State-wide hospital program.

The North Carolina Medical Care Commission is hereby authorized and empowered to act as the agency of the State of North Carolina for the purpose of setting up and administering any State-wide plan for the construction and maintenance of hospitals, public health centers and related facilities, and to receive and administer any funds which may be provided by the General Assembly of North Carolina and/or by the Congress of the United States for such purpose; and the Commission, as such agency of the State of North Carolina with the advice of the State Advisory Council set up as hereinafter provided, shall have the right to promulgate such State-wide plans for the construction and maintenance of hospitals, medical centers and related facilities, or such other plans as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto. The said Commission shall be authorized to receive and administer any funds which may be appropriated by any act of Congress or of the General Assembly of North Carolina for the construction of hospitals, medical centers and related activities or facilities, which may at any time in the future become available for such purposes; said Commission shall be further authorized to receive and administer any other federal funds, or State funds, which may be available, in the furtherance of any activity in which the Commission is authorized and empowered to engage under the provisions of this article establishing said Commission, and in connection therewith the Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of this article; to adopt such reasonable and necessary standards with reference thereto as may be proper to fully co-operate with the Surgeon General or other agency or department of the United States with the approval of the federal advisory council in the use of funds provided by the federal government, and at all times make such reports and give such information to the Surgeon General or other agency or department of the United States as may be required.

The Governor is hereby authorized and empowered to set up and establish a State Advisory Council to the North Carolina Medical Care Commission, to consist of five members, who shall each serve for a term of four years, with the right on the part of the Governor to fill vacancies for unexpired terms, said council to include representatives of nongovernment organizations or groups, and of State agencies, concerned with the operation, construction, or utilization of hospitals or medical centers, or allied facilities, which advisory council, when set up by the Governor, shall advise with the North Carolina Medical Care Commission with respect to carrying out the purposes and provisions of this article. The members of the State advisory Council to the North Carolina Medical Care Commission shall receive a per diem of seven dollars ($7.00) and necessary travel expenses except that this shall not apply to members of the State Advisory Council to the North Carolina Medical Care Commission who are representatives of a State agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such State agencies or departments shall be entitled to necessary subsistence and travel expenses.

The North Carolina Medical Care Commission and the said State Advisory Council set up by the Governor as herein authorized, shall be fully authorized and empowered to do all such acts and things as may be necessary, to authorize the State of North Carolina to receive the full benefits of any federal laws which are or may be enacted for the construction and maintenance of hospitals, health centers or allied facilities.

Out of the funds appropriated and made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities or subdivisions of government for use as community hospitals. The appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes above set forth and for such other related objects or purposes as shall be determined in each case by the North Carolina Medical Care Commission in accordance with the standards, rules and regulations as determined, adopted and promulgated by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as such aid and financial assistance is granted to municipalities and subdivisions of government: Provided, that hospitals now in the course of construction and approved by the North Carolina Medical Care Commission and the appropriate federal authority shall be entitled to receive financial assistance on the same basis as any hospital of the same classification and type that may be hereafter constructed and approved by the North Carolina Medical Care Commission and the appropriate federal authority.

Out of funds that may be made available to the North Carolina Medical Care Commission on or after July 1, 1951, by federal grants-in-aid or out of funds so made available by virtue of an act of the Congress of the United States popularly referred to as the Hill-Burton Act or out of funds made available by any other federal act, and consistent with and in conformity with said Hill-Burton Act, or any other federal act by which said funds may be made available to said Commission, the North Carolina Medical Care Commission shall appropriate, pay over to and make available to the North Carolina Sanatorium for the Treatment of Tuberculosis any sum that may be necessary not exceeding five hundred thousand dollars ($500,000.00) to supplement the appropriation heretofore made by the State of North Carolina for the building, construction, furnishing and equipping of a new unit which shall be used, governed and operated in accordance with plans to be agreed upon by the North Carolina Sanatorium for the Treatment of Tuberculosis and the University of North Carolina to the end that services may be rendered for the diagnosis and treatment of tuberculosis and other respiratory and related diseases.

The North Carolina Medical Care Commission may make available to any eligible hospital, sanatorium, clinic, or other medical facilities for the treatment of disease operated by the State of North Carolina or under its direction and control, or under the direction and control of any of its agencies or institutions, any unallocated federal sums or balances remaining after all grants-in-aid for local approvable projects made by the said Commission have been completed, disbursed or encumbered for all objects for which such grants-in-aid are available and for which said unallocated balances remain. (1945, c. 1096; 1947, c. 933, ss. 3, 5; 1949, c. 592; 1951, c. 1183, s. 1.)

Editor's Note. — The 1947 amendment added to the third paragraph following "(c)" the sentence as to per diem and travel expenses. It also rewrote the last paragraph.

The 1949 amendment rewrote the second paragraph of subsection (c).

The 1951 amendment added the last two paragraphs.

§ **131-121. Medical and other students; loan fund.**—The North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such rules as it may promulgate, to make loans to students who may wish to become physicians, dentists, pharmacists, or nurses and who are accepted for enrollment in any standard school or college giving approved courses in medicine, dentistry, pharmacy or nursing, and is approved by the Commission provided such student or students shall agree, that upon graduation and being duly licensed, to practice medicine, dentistry, pharmacy or nursing in some rural area of North Carolina for at least four years. Rural area, for the purpose of this section, shall mean any town or village having less than 2,500 population according to the last decennial census, or area outside and around such towns or villages. Such loans shall bear such rate of interest as may be fixed by the Commission, not to exceed four per cent (4%) per annum.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, to the North Carolina Medical Care Commission the sum of fifty thousand dollars ($50,000.00). The State Treasurer shall set up on his records an account to which shall be deposited said amount, and from which withdrawals shall be made upon vouchers made by the State Auditor upon request of the North Carolina Medical Care Commission. This appropriation shall not lapse at the end of any biennium, but shall remain available for the purposes herein stated.

The North Carolina Medical Care Commission is hereby authorized and empowered to establish and promulgate rules and regulations fixing fair and reasonable standards, systems and plans whereby physicians, dentists, pharmacists, and nurses receiving loans under this section shall receive a credit on the principal and/or interest of such loan in an amount fixed by such Commission for each year, or other period of time as fixed by regulation, of practicing his or her profession in a rural area as defined in this section. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019.)

Editor's Note. — The 1947 amendment rewrote the first paragraph to make it applicable to students who may wish to become dentists, pharmacists or nurses.

The 1949 amendment added the last paragraph.

§ **131-122. Expansion of medical school of the University of North**

Carolina.—In order to carry forward the State-wide plan of hospital and medical care, the board of trustees of the University of North Carolina, by and with the approval of the Governor and the North Carolina Medical Care Commission is hereby authorized and empowered to expand the two-year medical school of the University of North Carolina into a standard four-year medical school. The North Carolina Medical Care Commission is authorized and directed to make a complete survey of all factors involved in determining the location of the expanded medical school, giving especial attention to the advantages and disadvantages of locating said school in one of the large cities of the State, and shall render a report of their findings to the Governor and board of trustees of the University of North Carolina: Provided that no action shall be taken under this provision of this section, other than the work of the Commission, until a survey has been made and a report submitted to the governor and Medical Care Commission by the Rockefeller Foundation or some other accredited agency with experience in the field of surveying large areas in connection with medical education and medical care. The report of such agency is to be submitted to the Governor and the Medical Care Commission in a reasonable time in advance of the report of the Governor and the Commission to the board of trustees. (1945, c. 1096.)

§ **131-123. Appropriations for expenses of the North Carolina Medical Care Commission.**—In order to provide funds for the expenses of the North Carolina Medical Care Commission, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, the sum of fifty thousand dollars ($50,000.00) and for the fiscal year ending June thirtieth, one thousand nine hundred and forty-seven, the sum of fifty thousand dollars ($50,000.00). (1945, c. 1096.)

§ **131-124. Medical training for negroes.**—The North Carolina Medical Care Commission shall make careful investigation of the methods for providing necessary medical training for negro students, and shall report its findings to the next session of the General Assembly. In addition to the benefits provided by § 116-110, the North Carolina Medical Care Commission is hereby authorized to make loans to negro medical students from the fund provided in § 131-121, subject to such rules, regulations, and conditions as the Commission may prescribe. (1945, c. 1096.)

§ **131-125. Acceptance of gifts, grants and donations.**—The North Carolina Medical Care Commission is hereby authorized and empowered to accept and administer gifts, grants, or donations which may be made by the federal government or by any person, firm, or corporation for the purpose of carrying out the objects of this article, provided the acceptance of such gifts, grants, or donations shall be made without requiring the surrender of authority or control in the administration thereof by the North Carolina Medical Care Commission. (1945, c. 1096.)

§ **131-126. Hospital care associations.**—The North Carolina Medical Care Commission is hereby authorized to encourage the development of group insurance plans, the Blue Cross plan, and other plans which provide for insurance for the public against the costs of disease and illness. (1945, c. 1096.)

Article 13A.

Hospital Licensing Act.

§ **131-126.1. Definitions.**—As used in this article:

(a) "Hospital" means an institution devoted primarily to the rendering of medical, surgical, obstetrical, or nursing care, which maintains and operates facilities for the diagnosis, treatment or care of two or more nonrelated individuals suffering from illness, injury or deformity, or where obstetrical or other medical or nursing care is rendered over a period exceeding twenty-four hours.

The term "hospital" for clarification purposes, includes, but not by way of limitation, an institution that receives patients and renders for them diagnostic, medical, surgical and nursing care; and "hospital" means also an allied institution that provides for patients diagnostic, medical, surgical and nursing care in branches of medicine such as obstetric, pediatric, orthopedic, and eye, ear, nose, and throat and cardiac services, and in the diagnosis and treatment of mental and neurological ailments, and in the diagnosis and treatment and care of chronic diseases and transmissible diseases.

The term "hospital" as used in this article does not apply to a welfare institution, the primary purpose of which is to provide domiciliary and/or custodial care to its residents, and it does not apply to an infirmary which such institution may maintain to provide medical and nursing care for its residents.

Further to distinguish a "hospital" from a "welfare institution," as the term is used in this article, the latter means orphanages; penal and correctional institutions; homes for the county or city poor, aged, and infirm; nursing homes for the mentally and physically infirm; homes for the aged; and convalescent and rest homes; and homes for pregnant women who require public assistance and/or custodial care or obstetrical and nursing care in such home, or nursing care prior to or subsequent to delivery in a "hospital".

(b) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

(c) "Governmental unit" means the State, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

(d) "Commission" means the North Carolina Medical Care Commission as established by §§ 131-117 to 131-126, as amended, and as the same may be hereafter amended. (1947, c. 933, s. 6; 1949, c. 920, s. 1.)

Editor's Note. — The 1949 amendment rewrote subsection (a).

§ **131-126.2. Purpose.**—The purpose of this article is to provide for the development, establishment and enforcement of basic standards:

(1) For the care and treatment of individuals in hospitals and

(2) For the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will ensure safe and adequate treatment of such individuals in hospitals, provided, that nothing in this article shall be construed as repealing any of the provisions of article 27 of chapter 130 of the General Statutes of North Carolina. (1947, c. 933, s. 6.)

§ **131-126.3. Licensure.**—After July 1st, 1947, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this State without a license. (1947, c. 933, s. 6.)

§ **131-126.4. Application for license.**—Licenses shall be obtained from the Commission. Applications shall be upon such forms and shall contain such information as the said Commission may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as may be lawfully prescribed hereunder. (1947, c. 933, s. 6; 1949, c. 920, s. 3.)

Editor's Note. — The 1949 amendment struck out the former last sentence relating to license fee accompanying application.

§ **131-126.5. Issuance and renewal of license.**—Upon receipt of an application for license, the Commission shall issue a license if it finds that the applicant and hospital facilities comply with the provisions of this article and the regulations of the said Commission. Each such license, unless sooner suspended or revoked, shall be renewable annually without charge upon filing of the license, and approval by the Commission, of an annual report upon such uniform dates and containing such information in such form as the Commission shall prescribe by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Commission. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said Commission. (1947, c. 933, s. 6; 1949, c. 920, s. 4.)

Editor's Note. — The 1949 amendment struck out the words "and the license fee" formerly following the word "license" the first time it appears in the section.

§ **131-126.6. Denial or revocation of license; hearings and review.**—The Commission shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this article or the rules, regulations or minimum standards promulgated under this article.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period shall give written notice to the Commission requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the Commission. At any time at or prior to the hearing, the Commission may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the Commission. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by registered mail, or served personally upon, the applicant or licensee. The decision shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the court, pursuant to § 131-126.14 hereof.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said Commission with the advice of the hospital advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to § 131-126.14 hereof. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. (1947, c. 933, s. 6.)

§ **131-126.7. Rules, regulations and enforcement.**—The Commission with the advice of the hospital advisory council, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to the different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of the article. (1947, c. 933, s. 6.)

§ **131-126.8. Effective date of regulations.**—Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this article shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. (1947, c. 933, s. 6.)

§ **131-126.9. Inspections and consultations.** — The Commission shall make or cause to be made such inspections as it may deem necessary. The Commission may delegate to any State officer, agent, board, bureau or division of State government authority to make such inspections as the Commission may designate and according to rules and regulations promulgated by the Commission. The Commission may revoke such delegated authority in its discretion and make its own inspections according to the powers granted hereunder. The Commission may prescribe by regulations that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the Commission for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. (1947, c. 933, s. 6.)

§ **131-126.10. Hospital advisory council.**—The Commission may appoint a hospital advisory council which shall consist of the executive secretary of the Commission who shall serve as chairman ex officio, the Commissioner of the State Board of Public Welfare, ex officio, the State health officer, ex officio, the Superintendent of Mental Hygiene, ex officio, and the following: One or more individuals of recognized ability in the field of hospital administration; one or more individuals of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health; one or more individuals with broad civic interests representing consumers of hospital services.

In each of these three aforesaid groups, members shall be appointed for terms of one, two, three and four years respectively, and their successors shall be appointed for terms of fours years, except when appointed to complete an unexpired term. Members whose terms expire shall hold office until appointment of their successors. The members of the hospital advisory council to the North Carolina Medical Care Commission shall receive a per diem of seven dollars ($7.00) and necessary travel expenses except that this shall not apply to members of the hospital advisory council who are representatives of a State agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such State agencies or departments shall be entitled to necessary subsistence and travel expenses. (1947, c. 933, s. 6.)

§ **131-126.11. Functions of hospital advisory council.** — The hospital advisory council shall have the following responsibilities and duties:

(a) To consult and advise with the Commission in matters of policy affecting administration of this article, and in the development of rules, regulations and standards provided for hereunder.

(b) To review and make recommendations with respect to rules, regulations and standards authorized hereunder prior to their promulgation by the Commission as specified herein. The council shall meet not less than once each year, and additionally at the call of the chairman or at the request of any five of its members. (1947, c. 933, s. 6.)

§ **131-126.12. Information confidential.**—Information received by the Commission through filed reports, inspection, or as otherwise authorized under this article, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. (1947, c. 933, s. 6.)

§ **131-126.13. Annual report of Commission.**—The Commission shall prepare and publish an annual report of its activities and operations under this article. (1947, c. 933, s. 6.)

§ **131-126.14. Judicial review.** — Any applicant or licensee who is dissatisfied with the decision of the Commission as a result of the hearing provided in § 131-126.6 may, within thirty (30) days after the mailing or serving of notice of the decision as provided in said section, file a notice of appeal to the superior court in the office of the clerk of the superior court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the Commission. Thereupon the Commission shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the Commission shall be conclusive unless contrary to the weight of the evidence but upon good cause shown the court may remand the case to the Commission to take further evidence, and the Commission may thereupon make new or modified findings of facts or decision. The court shall have power to affirm, modify or reverse the decision of the Commission and either the applicant or licensee or the Commission may appeal to the Supreme Court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court shall otherwise order in the public interest. (1947, c. 933, s. 6.)

§ **131-126.15. Penalties.**—Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense. (1947, c. 933, s. 6.)

§ **131-126.16. Injunction.**—Notwithstanding the existence or pursuit of any other remedy, the Commission may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. (1947, c. 933, s. 6.)

§ **131-126.17. Article not applicable to** §§ **122-72 to 122-75.**—The provisions of this article shall not apply to §§ 122-72 through 122-75, inclusive, of the General Statutes, which give to the State Board of Public Welfare, in addition to other responsibilities, authority to license privately owned and operated hospitals for the mentally disordered. (1947, c. 933, s. 6; 1949, c. 920, s. 2.)

Editor's Note. — The 1949 amendment rewrote this section.

ARTICLE 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

§ **131-126.18. Definitions.**—As used in this article:

(a) "Municipality" means any county, city, town or other political subdivision of this State, or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes.

(b) "Municipal" means pertaining to a municipality as herein defined.

(c) "Hospital facility" means any type of hospital, clinic or public health center, housing or quarters for local public health departments, including relating facilities such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals.

(d) "Nonprofit association" means any corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

(e) "Governing authority of hospital district" means the board of county commissioners of any county in which there is located wholly within the boundaries of the county a hospital district created under the provisions of article 13C of chapter 131 of the General Statutes. (1947, c. 933, s. 6; 1949, c. 766, ss. 1, 2, 4.)

Editor's Note. — The 1949 amendment added at the end of subsection (a) the words "or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes." It inserted in subsection (c) the words "housing or quarters for local public health departments." It also added subsection (e).

Use of Funds for Hospital "Buildings." —Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. Worley v. Johnston County, 231 N. C. 592, 58 S. E. (2d) 99 (1950).

§ **131-126.19. Purpose.**—It is the purpose of this article to confer additional authority upon municipalities for the furnishing of hospital, clinic and similar services to the people of this State, through the construction, operation, and maintenance of hospital facilities and otherwise; and to this end to authorize municipalities to co-operate with other public and private agencies and with each other, and to accept assistance from agencies of this State or the federal government or from other sources. This article shall be liberally construed to effect these purposes. (1947, c. 933, s. 6.)

§ **131-126.20. General powers of municipalities in the construction, acquisition, operation and maintenance of hospital facilities.**—(a) In addition to authority provided by existing laws, every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to construct, operate, and maintain hospital facilities. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, grant, gift, devise, lease, condemnation or otherwise, acquire real or personal property or any interest therein. The municipality may make reasonable charges for the use of any such hospital facilities or may make them available without charge to such classes of persons as it considers necessary or desirable to carry out the purposes of this article.

(b) Any municipality may, by purchase, gift, devise, lease, condemnation or otherwise, acquire any existing hospital facilities.

(c) Any municipality may enter into a contract or other arrangement with any other municipality or other public agency of this or any other state or of the United States or with any individual, private organization or nonprofit association for the provision of hospital, clinic, or similar services. Pursuant to such contract or other arrangement, the municipality may pay for such services out of any appropriations or other moneys made available for such purposes. A municipality may lease any hospital facilities to any nonprofit association on such terms and subject to such conditions as will carry out the purposes of this article. (1947, c. 933, s. 6.)

Stated in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ **131-126.21. Board of managers.**—Any authority vested by this article in the municipality for the planning, establishment, construction, maintenance or operation of hospital facilities may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers, duties, compensation, and tenure shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, construction, maintenance or operation shall be a responsibility of the municipality. (1947, c. 933, s. 6.)

Cited in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ **131-126.22. Appropriations and taxation.**—(a) The governing body of any municipality having power to appropriate and raise money is hereby authorized to appropriate and to raise by taxation and otherwise sufficient moneys to carry out the provisions and purposes of this article.

(b) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a municipality for the special purposes of this article, for which special approval is hereby given, provided that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. Such election as to counties may be held at the same time and in the same manner as elections held under the provisions of article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 5.)

Editor's Note. — The 1949 amendment rewrote the proviso at the end of the first sentence of subsection (b). See § 153-92.1.

§ **131-126.23. Financing cost of construction, acquisition and improvement; bond issues.**—(a) The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping any hospital facility or the site thereof may be paid for by appropriation of moneys available therefor or wholly or partly from the proceeds of the sale of bonds or other obligations of the municipality as the governing body of the municipality shall determine. For such purposes a county may issue general obligation bonds, as authorized by the County Finance Act, the same being article 9 of chapter 153 of the General Statutes and a city or town as authorized by the Municipal Finance Act, the same being subchapter III of chapter 160 of the General Statutes and consisting of articles 25, 26, 27, 28, 29, 30, 31 and 32 of chapter 160 of the General Statutes, and any municipality may issue revenue bonds as authorized by article 34 of chapter 160 of the General Statutes, the same being designated as the Revenue Bond Act of 1938.

(b) Notwithstanding any limitations provided by the Constitution or by any general or special law as to the amount of bonds or obligations that may be issued, a municipality may issue bonds or obligations in excess of any such limitations for the purposes authorized by this article; provided, that such amount in excess of such constitutional limitation is referred to and approved by a majority of the qualified voters of said municipality voting in an election on such question.

(c) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a municipality for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article; and the special approval of the General Assembly is hereby given for the levying of taxes for such purposes; provided, that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipality; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark (X); but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this subsection. Such election as to counties may be held at the same time and in the same manner as elections held under article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. The question of levying a tax for the operation and maintenance of hospital facilities as provided by this subsection may be submitted at the same time the question of issuing bonds is submitted as provided in this article or the question of a levy of taxes for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 6.)

Editor's Note. — The 1949 amendment rewrote the proviso at the end of the first sentence of subsection (c). See § 153.92.1. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

Quoted in Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ **131-126.24. Condemnation.** — In the condemnation of property authorized by this article, the municipality shall proceed in the manner provided in chapter 40 of the General Statutes of North Carolina, or the charter of the municipality. For the purpose of making surveys and examinations relative to any condemnation procedures, it shall be lawful to enter upon any land doing no unnecessary damage. Notwithstanding the provisions of any other statute or of any applicable municipal charter, the municipality may take possession of any property to be condemned at any time after commencement of the condemnation procedure. The municipality shall not be precluded from abandonment of the condemnation of any such property in any case where possession thereof has not been taken. (1947, c. 933, s. 6.)

§ **131-126.25. Federal and State aid.**—(a) Every municipality or nonprofit association is authorized to accept, receive, receipt for, disburse and expend federal and State moneys and other moneys, public or private, made available by grant, loan, gift or devise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by a municipality or nonprofit association upon such terms and conditions as are prescribed by the United States and as are consistent with State law; and all State moneys accepted under this section shall be accepted and expended by the municipality or nonprofit association upon such terms and conditions as are prescribed by the State and/or North Carolina Medical Care Commission. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf, deposit all moneys received pursuant to this section and shall keep them in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

(b) Out of funds made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid, as provided in this subsection, to municipalities and/or nonprofit associations to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities and/or nonprofit associations for use as community hospitals. The amount of State funds to be granted hereunder shall be determined in each case by the North Carolina Medical Care Commission in accordance with standards, rules and regulations as determined by the North Carolina Medical Care Commission.

Application for a grant under this subsection shall be made to the North Carolina Medical Care Commission by any municipality, acting separately or with one or more other municipalities, or by any nonprofit association, on such forms and in such manner as may be prescribed by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may establish such reasonable requirements for approval as it deems necessary or desirable to effectuate the purposes of this article. The North Carolina Medical Care Commission shall give preference to applications in accordance with their priority in the hospital construction program established pursuant to the Federal Hospital Survey and Construction Act. (1947, c. 933, s. 6.)

§ 131-126.26. Municipal aid. — If the governing body of any municipality determines that the public interest and the interests of the municipality will be served by aiding another municipality or municipalities or a nonprofit association or nonprofit associations to provide physical facilities for furnishing hospital, clinic, or similar services to the people of the municipality, such municipality, may render such aid by gift of real or personal property, or lease or loan thereof with or without rental or charge, or by gift of money, or loan thereof with or without interest. For the purpose of raising money to be given or loaned as aforesaid, such municipality shall have power to levy taxes as provided in § 131-126.22 and to issue general obligation bonds as provided in § 131-126.23, as though such taxes were to be levied and such bonds were to be issued to finance hospital facilities owned by the municipality. No bonds shall be issued under this section, however, except for the construction of new buildings, the expansion, remodeling and alteration of existing buildings, and the equipment of buildings, or for one or more of said purposes. For the purpose of applying the provisions of the County Finance Act and the Municipal Finance Act to bonds authorized by this section, the bonds shall be deemed to be bonds issued to finance public buildings owned by the municipality issuing the bonds. The special approval of the General Assembly is hereby given for the levying of the taxes authorized by this section, including taxes sufficient to pay the principal of and the interest on bonds issued under this section. The proceeds of the sale of such bonds may be expended by the municipality that issues them or by the municipality or municipalities or nonprofit association or nonprofit associations in aid of which the bonds are issued, as may be determined by the governing body of the municipality that issued the bonds. If any building for which bonds are issued under this section shall, prior to the final date of maturity of the bonds, cease for 90 days or more to be used for the purpose of furnishing hospital, clinic, or similar services to the people of the municipality that issued the bonds, or ceased to be owned by a municipality or a nonprofit association, the municipality that issued the bonds shall be entitled to recover from the owners of such building, or from their predecessors entitled since the date of the bonds issued for such building, the amount of such bonds remaining outstanding and unpaid. Such right of recovery shall, however, be subordinate to any claim of the United States on account of aid in financing such building. Any municipality that grants aid under this section may require assurance from the grantee that the grantee will furnish hospital, clinic, or similar services during a specified period to the people of the municipality that grants such aid. Such assurance may be given by lease, deed of trust, mortgage, contract to convey, lien, trust indenture, or other means. (1947, c. 933, s. 6; 1951, c. 1143, s. 1.)

Editor's Note. — The 1951 amendment rewrote this section.

Title to Hospital. — By virtue of this section the acquisition of title to a hospital by the county is not a condition precedent to the extension of aid by the municipality. Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ **131-126.27. Joint operations.** — All powers, privileges and authority granted to any municipality by this article may be exercised and enjoyed jointly with any other municipality. To this end any two or more municipalities may enter into agreements with each other for the acquisition, construction, improvement, maintenance, or operation of hospital facilities. Such agreement may provide for:

(a) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage such hospital facilities;

(b) The authority and duties of such board and the compensation of its members;

(c) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of the hospital facilities and the provision of funds therefor;

(d) Duration, amendment, and termination of the agreement and the disposition of property on its termination; and

(e) Such other matters as are necessary or desirable in the premises. (1947, c. 933, s. 6.)

§ **131-126.28. Public purpose; county and municipal purpose.**—The acquisition of any land or interest therein pursuant to this article, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, and regulation of hospital facilities and the exercise of any other powers herein granted to municipalities, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity; and in the case of any county, are declared to be county functions and purposes as well as public and governmental; and in the case of any municipalities other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any county or other municipality in the manner and for the purpose enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes as a matter of public necessity, and for county or municipal purposes, respectively. (1947, c. 933, s. 6.)

§ **131-126.29. Implied incidental powers.** — In addition to the general and special powers conferred by this article, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers. All powers granted by this article to municipalities are specifically declared to be granted to the counties of this State, any other statute to the contrary notwithstanding. (1947, c. 933, s. 6.)

§ **131-126.30. Short title.**—This article may be cited as the "Municipal Hospital Facilities Act." (1947, c. 933, s. 6.)

Article 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

§ **131-126.31. Petition for formation of hospital district; hearing.**—Upon receipt of a petition signed by not less than one hundred citizens of the territory described in such petition, praying that such territory be created into a hospital district and that bonds and/or notes be issued under the provisions of this article, the North Carolina Medical Care Commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such proposed hospital district, that on a date to be named in such notice, which shall not be earlier than twenty days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice. At the time and place set forth in such notice, the North Carolina Medical Care Commission, or its duly authorized representative who shall be a member of said Commission, shall hear all interested persons and may adjourn the hearing from time to time. (1949, c. 766, s. 5.)

§ **131-126.32. Result of hearing; name of district.**—The North Carolina Medical Care Commission may deny such petition, or it may grant such petition and enter an order creating a hospital district, comprising either the territory described in such petition or a part of such territory and additional territory, and the order of the North Carolina Medical Care Commission creating such hospital district shall define the boundaries thereof: Provided, however, that all the territory embraced in a new hospital district shall be located in one county. Each hospital district so created shall be designated by the North Carolina Medical Care Commission as the "......... Hospital District of .... County," inserting in the blank spaces some name identifying the locality and the name of the county.

Before any petition has been filed requesting authorization to issue bonds or levy any tax as provided by this article, the North Carolina Medical Care Commission is authorized and empowered to change or alter the boundary lines of any hospital district heretofore created for the purpose of excluding territory from such hospital district. The procedure for excluding territory from any hospital district shall be the same procedure provided in this article for the creation of a hospital district and as set forth in this section, as well as § 131-126.31. The petition shall show the boundaries of the territory to be excluded from such hospital district, and the North Carolina Medical Care Commission, after hearing, may grant such petition and enter an order excluding such territory from any hospital district heretofore created, and such order shall define the boundaries of the territory excluded. (1949, c. 766, s. 5; 1951, c. 805.)

Editor's Note. — The 1951 amendment added the second paragraph.

§ **131-126.33. Election for bond issue; method of election.**—Whenever five hundred or more adult residents of such hospital district shall file with the board of county commissioners of the county in which such hospital district is located a petition requesting an election, the board of county commissioners shall order a special election to be held in any such hospital district for the purpose of voting upon the question of issuing bonds and/or notes and levying a sufficient tax for the payment thereof for the purpose of and/or the cost of planning and acquiring, establishing, developing, constructing, enlarging, improving or equipping any type of hospital, clinic or public health center, including relating facilities such as laboratories, out-patient departments, nurses' homes and training facilities operated in connection with hospitals and purchasing sites in such district for any one or more of said purposes, including any public or nonprofit hospital facility. In all such elections, the board of county commissioners of such county shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of the election upon filing with it of the election returns by the officers holding the election and shall record such determination on their records. The notice of election shall be given by publication at least three times in some newspaper published or circulating in such hospital district. The notice shall state the date of the election, the place or places at which the election will be held, the boundary lines of such hospital district unless the hospital district is coterminous with a township in said county (in which event the notice shall so state), the maximum amount of bonds and/or notes to be issued, the purpose or purposes for which the bonds and/or notes are to be issued, and the fact that a sufficient tax will be levied on all taxable property within the hospital district for the payment of the principal and interest of the bonds and/or notes. The first publication of the notice shall be at least thirty days before the election. A new registration of the qualified voters of such hospital district shall be ordered and notice of such new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in such hospital ditrict at least thirty days before the close of the registration books. This notice of registration may be considered one of three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of the voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day; and except as otherwise provided in this article, such election shall be held in accordance with the laws governing general elections. The form of the question, as stated on the ballot or ballots, shall be in substantially the words: "For the issuance of $........... Hospital Bonds and/or Notes, or a description of any other purpose named in this article for which bonds and/or notes may be issued, and the levying of a sufficient tax for the payment thereof." Such affirmative and negative form may be printed upon separate ballots, or both thereof may be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a cross mark [X]. (1949, c. 766, s. 5.)

§ **131-126.34. Canvassing vote and determining results.**—At the close of the polls, the election officers shall count the votes and make returns thereof to the board of county commissioners, which board shall, as soon as practicable after the election, judicially pass upon the returns and judicially determine and declare the results of such election, which determination shall be spread upon the minutes of said board. The returns shall be made in duplicate, one copy of which shall be delivered to the board of county commissioners as aforesaid and the other filed with the clerk of the superior court of the county in which the hospital district is situated. The board of county commissioners shall prepare a statement showing the number of votes cast for and against the bonds and/or notes, and declaring the result of the election, which statement shall be signed by the chairman of the board and attested by the clerk, who shall record it in the minutes of the board and file the original in his office and publish it once in a newspaper published or circulating in such hospital district. (1949, c. 766, s. 5.)

§ **131-126.35. Limitation of actions.**—No right of action or defense founded upon the invalidity of such election or the invalidity of any proceedings or steps taken in the creation of such district or such unit shall be asserted, nor shall the validity of such election or the validity of the creation of such hospital district, or the right or duty to levy sufficient tax for the payment of the principal and interest of such bonds and/or notes, be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of results as provided in the preceding section (1949, c. 766, s. 5.)

§ **131-126.36. Issuance of bonds and levy of taxes.**—If a majority of the votes cast shall be in favor of the issuance of such bonds and/or notes and the levy of such tax, then the board of county commissioners may provide by resolution, which resolution may be finally passed at the same meeting at which it is introduced, for the issuance of such bonds and/or notes, which bonds and/or notes shall be issued in the name of the county, but they shall be made payable exclusively out of taxes to be levied in such hospital district, except the board of county commissioners may pay from county funds any part of the principal and interest of said bonds and/or notes. They shall be issued in such form and denominations, and with such provisions as to the time, place and medium of payment of principal and interest as the said board of county commissioners may determine, subject to the limitations and restrictions of this article. They may be issued as one issue, or divided into two or more separate issues, and in either case may be issued at one time or in blocks from time to time. When bonds are to be issued, they shall be serial bonds and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. The bonds and/or notes shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, and may have interest coupons attached, and may be made registerable as to principal or as to both principal and interest, under such terms and conditions as may be prescribed by said board. They shall be signed by the chairman of the board of county commissioners, and the seal of the county shall be affixed to or impressed upon each bond and/or note and attested by the register of deeds of the county or by the clerk of said board; and the interest coupons shall bear the printed, lithographed or facsimile signature of such chairman. The delivery of bonds and/or notes, signed as aforesaid by officers in office at the time of such signing, shall be valid, notwithstanding any changes in office occurring after such signing. (1949, c. 766, s. 5.)

§ **131-126.37. Collection and application of tax.**—The board of county commissioners is hereby authorized and directed to levy annually a special tax, ad valorem, on all taxable property in the hospital district in which the election was held, sufficient to pay the principal and interest of the bonds and/or notes as such principal and interest become due. Such special tax shall be in addition to all other taxes authorized to be levied in such district or in such unit. The taxes provided for in this section shall be collected by the county officer collecting other taxes and be applied solely to the payment of principal and interest of such bonds and/or notes. (1949, c. 766, s. 5.)

§ **131-126.38. Tax levy for operation, equipment and maintenance.**—Upon receipt of a petition signed by five hundred or more adult residents of a hospital district, or upon request set forth in the petition for a bond issue, as heretofore provided in this article, the board of county commissioners of the county in which such hospital district is located shall cause to be levied a tax for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article, including any public or nonprofit hospital facility: Provided, that the levy of such tax is approved by a majority of the qualified voters of the hospital district who shall vote thereon in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the board of county commissioners of such county; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark [X]; but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section. Such election may be held at any time fixed by the board of county commissioners of such county, and the question of levying a tax for the operation and maintenance of hospital facilities, as provided by this section, may be submitted at the same time the question of issuing bonds is submitted, as provided in this article, or the question of levying a tax for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the board of county commissioners of the county in which the hospital district is located. Such election for the approval of a levy of taxes for costs of operation, equipment and maintenance of any hospital facility, as authorized by this article, shall be held and conducted in the same manner as elections are held and conducted to determine the question of the issuance of bonds as provided in this article. (1949, c. 766, s. 5.)

§ **131-126.39. Article supplemental to other grants of authority.**— The powers conferred by this article shall be regarded as supplemental and in addition to powers conferred by other laws and shall not supplant or repeal any existing powers for the issuance of bonds and/or notes, or any provisions of law for the payment of bonds and/or notes issued under such powers, or for the custody of moneys provided for such payment. (1949, c. 766, s. 5.)

§ **131-126.40. Approval of Local Government Commission.** — This article shall constitute full authority for the things herein authorized and no proceedings, publications, notices, consents or approvals shall be required for the doing of the things herein authorized, except such as are herein prescribed and required, and except that the provisions of the Local Government Act then in force as to the approval of the issuance of bonds and/or notes and endorsements of such approval upon such bonds and/or notes and as to the sale of bonds and/or notes and the disposition of the proceeds, shall be applicable to the bonds and/or notes, authorized by this article. The proceeds shall be paid out only upon order of the board of county commissioners. (1949, c. 766, s. 5.)

ARTICLE 13D.

Further Authority of Subdivisions of Government to Finance Hospital Facilities.

§ **131-126.41. Authority to pledge, encumber or appropriate certain funds to secure operating deficits of publicly owned or nonprofit hospitals.** — The board of county commissioners of any county or the governing authority of any city or town is hereby authorized, in its discretion, to pledge, encumber or appropriate funds from any surplus funds, unappropriated funds, or funds derived from profits of alcoholic beverage control stores for the purpose of guaranteeing the operating deficit of any publicly owned or nonprofit hospital. The special approval of the General Assembly is hereby given to the above enumerated appropriations and authorizations for such special purposes. (1949, c. 767, s. 1.)

§ **131-126.42. Issuance of bonds and notes for construction, operation and securing operating deficits.** — The special approval of the General Assembly is hereby given to the issuance by counties, cities and towns of bonds and notes for the special purpose of building, erecting and constructing any publicly owned or nonprofit hospital and for the purpose of financing the cost of operation, equipment and maintenance of any such hospital or for the purpose of securing or guaranteeing any operating deficit of any such hospital, and the special approval of the General Assembly is hereby given to all counties, cities and towns to levy property taxes for the payment of said bonds and notes and interest thereon. (1949, c. 767, s. 2.)

§ **131-126.43. Tax levy for construction, operation and securing operating deficits.** — The special approval of the General Assembly is hereby given to the governing authority of any county, city or town for the levying of a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10c) on the one hundred dollars ($100.00) value of property annually for the purpose of financing the cost of operation, equipment and maintenance of any publicly owned or nonprofit hospital or to guarantee or secure the operating deficit of any such hospital. (1949, c. 767, s. 3.)

§ **131-126.44. Article construed as supplementary to existing hospital facility laws.**—The provisions of this article shall not be construed as repealing the provisions of any other statute or act authorizing the issuance of bonds and the levying of taxes for the construction, maintenance and operation of hospitals, health centers or other hospital facility as the words "hospital facility" are defined in § 131-126.18 and likewise providing for a vote of the qualified voters in an election for the approval of such bond issue or tax levy. This article shall be construed to be additional and supplementary to all statutes and provisions of law providing for such hospital facilities, their construction and operation by bond issues and tax levies approved by the vote of the qualified voters in an election and shall not be construed to repeal the provisions of such statutes and laws nor in any manner affect existing statutes provided for such purposes. (1949, c. 767, s. 4.)

Article 14.

Hospital for Spastic Children.

§ **131-127. Creation of hospital; powers.**—An institution, to be known and designated as, "the North Carolina Hospital for Treatment of Spastic Children," is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 504, s. 1.)

§ **131-128. Governor to appoint board of directors; terms of office; filling vacancies.**—The Governor shall appoint a board of directors consisting of nine (9) members for said hospital, three of whom shall be appointed for two years, three for four years, and three for six years, who shall hold their office until their successors have been appointed. At the end of the term of office of each of said directors, their successors shall each be named for a term of six years. The Governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. (1945, c. 504, s. 2.)

§ **131-129. Board authorized to acquire lands and erect buildings.**—The board of directors, with the approval of the Governor and the Council of State, is authorized to secure by gift or purchase suitable real estate within the State at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased or any commitments made for the erection or permanent improvements of any buildings involving the use of State funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the General Assembly. (1945, c. 504, s. 3.)

§ **131-130. Operation pending establishment of permanent quarters.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary use of any State owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of the North Carolina Hospital for Treatment of Spastic Children upon such terms as may be mutually agreed upon. (1945, c. 504, s. 4.)

§ **131-131. Board to control and manage hospital.**—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the patients therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the patients of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. (1945, c. 504, s. 5.)

§ **131-132. Appointment and discharge of superintendent; qualifications and compensation.**—The board of directors shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of spastic ailments, and may fix the compensation of the superintendent, subject to the approval of the Budget Bureau, and may discharge the superintendent at any time for cause. (1945, c. 504, s. 6.)

§ **131-133. Aims of hospital.**—The purpose and aim of the North Carolina Hospital for Treatment of Spastic Children is to treat, care for, train, and educate, as their condition will permit, all spastic children of training age in the State who are capable of being rehabilitated; to disseminate knowledge concerning the extent, nature, and prevention of spastic ailments, and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said hospital, spastic children under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. Application for the admission of a child must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian or by the superintendent of any county home or by a person having management of any orphanage, association, society, children's home, or other institution for the care of children to which the custody of such child has been committed, in which event the consent of the parents shall not be required. (1945, c. 504, s. 7.)

§ **131-134. Rules and regulations; payment for treatment.**—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of patients to the hospital, but in so doing shall not exclude any patient otherwise qualified for admission because of inability to pay for examination and treatment, and all indigent patients otherwise qualified for admission shall be received without regard to their indigent condition when there is space and accommodation available for such patients. The board of directors shall require all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care and upon their refusal to do so, the said board of directors is authorized and empowered to institute action in the name of the hospital in the county in which it is located for the collection thereof: Provided, that if the amount is less than two hundred dollars ($200.00) the said action shall be instituted in the county where the defendant resides. (1945, c. 504, s. 8.)

§ **131-135. Discharge of patients.**—Any patient entered in the hospital may be discharged therefrom or returned to his or her parents or guardian when, in the judgment of the directors, it will not be beneficial to such patient or to the best interest of the hospital to be longer retained therein. (1945, c. 504, s. 9.)

§ **131-136. Board to make further investigations.** — The board of directors shall further investigate and study the need and requirements for establishing and equipping a hospital for the care and treatment of mentally normal cerebral palsy (spastic) patients and determine the annual per capita cost for the treatment of such patients, and cause to be prepared necessary plans and specifications for providing and equipping a hospital with a capacity of fifty (50) beds. Said board of directors shall present to the next session of the General Assembly such plans and specifications together with its recommendations as to the establishment of such a hospital, including a site for its location. To meet the expense of preparing said plans and specifications and other incidental expenses of the board, there is hereby appropriated out of the contingency and emergency fund of the State such an amount as the Governor and Council of State may consider necessary. (1945, c. 504, s. 10.)

Chapter 132.

Public Records.

Sec.
132-1. Public records defined.
132-2. Custodian designated.
132-3. Destruction of records regulated.
132-4. Disposition of records at end of official's term.
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132-7. Keeping records in safe places; copying or repairing; certified copies.
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132-9. Violation of chapter a misdemeanor.

§ **132-1. Public records defined.**—Public records comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business. (1935, c. 265, s. 1.)

§ **132-2. Custodian designated.**—The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ **132-3. Destruction of records regulated.**—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with § 121-4, without the consent of the State Department of Archives and History. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars nor more than five hundred dollars. (1935, c. 265, s. 3; 1943, c. 237.)

Cross Reference.—Further as to destruction of records, see § 121-6.

Editor's Note. — The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical Commission."

§ **132-4. Disposition of records at end of official's term.** — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the State Department of Archives and History, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of ten days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 4; 1943, c. 237.)

Editor's Note. — The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical Commission."

§ **132-5. Demanding custody.**—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for ten days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 5.)

§ **132-6. Inspection and examination of records.**—Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ **132-7. Keeping records in safe places; copying or repairing; certi-**

fied copies.—Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with non-combustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

Editor's Note. — The 1951 amendment inserted the fourth sentence.

§ **132-8. Assistance of State Department of Archives and History.**—The State Department of Archives and History shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. (1935, c. 265, s. 8; 1943, c. 237.)

Editor's Note. — The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical Commission."

§ **132-9. Violation of chapter a misdemeanor.**—Any public official who refuses or neglects to perform any duty required of him by this chapter shall be guilty of a misdemeanor and upon conviction fined not more than twenty dollars for each month of such refusal or neglect. (1935, c. 265, s. 9.)

Chapter 133.

Public Works.

Sec.
133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.
133-2. Drawing of plans by material furnisher prohibited.
133-3. Specifications to carry competitive items; substitution of materials.
133-4. Violation of chapter made misdemeanor.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.—It shall be unlawful for any person, firm or corporation to employ on any city, county or State work, supported wholly or in part with public funds, any architect, engineer, designer or draftsman, who is in any way connected with the sale or promotion of or in the manufacture of any material or items used in the construction of such works, or who is a stockholder, officer, partner, or owner of any manufacturing concern, or of any sales organization, engaged in the manufacture or sale of such material, or items, which may be used in the construction of such works. (1933, c. 66, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited.—It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items; substitution of materials.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or State work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that there are not that many items in competition, then as many items as are available shall be specified. Substitution of materials or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval before any such substitutions may be made. (1933, c. 66, s. 3; 1951, c. 1104, s. 5.)

Editor's Note. — The 1951 amendment added the last sentence.

§ 133-4. Violation of chapter made misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars. (1933, c. 66, s. 4.)

Chapter 134.

Reformatories.

Article 1.

Stonewall Jackson Manual Training and Industrial School.

Sec.

134-1. Incorporation; certain powers.
134-2. Purpose of the school.
134-3. Power to purchase land and locate school.
134-4. [Repealed.]
134-5. Application of funds; account required.
134-6. Trustees to employ superintendent and assistants, and make regulations.
134-7. Treasurer and superintendent to give bond.
134-8. Powers of superintendent.
134-9. Governor to visit reformatory.
134-10. Courts may commit offenders to reformatory.
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134-12. Department first established; sexes separated.
131-13. Industrial training provided.
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134-17. Boys from counties making gifts; designation of cottage.
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134-20. Contributions from public funds; bond issues.
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Article 2.

State Home and Industrial School for Girls.

134-22. Incorporation and name.
134-23. [Repealed.]
134-24. Power to purchase land and erect buildings.
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134-26. Appointment of officers; compensation; bylaws.
134-27. Persons committed to the reformatory; time of detention.
134-28. Delivery of inmates to institution; expenses.
134-29. Voluntary application for admission; care of children.

Sec.

134-30. Law as to juvenile delinquents applied.
134-31. Discharge on parole; arrest for escape or violation of parole.
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ARTICLE 1.

Stonewall Jackson Manual Training and Industrial School.

§ **134-1. Incorporation; certain powers.**—The Stonewall Jackson Manual Training and Industrial School is hereby created a corporation, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1907, c. 509, s. 1; 1907, c. 955; C. S., s. 7313; 1925, c. 306, s. 1; 1943, c. 776, s. 12.)

Editor's Note.—Prior to the 1943 amendment this section related to the board of trustees of the school as a body corporate.

This article is constitutional and committing a child to the institution is not imprisonment as for the punishment of crime, but is a paternal restraint exercised by the State for the protection of society and for the interest of the child. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

Detention Cannot Be for Punishment. — The punishment for vagrancy cannot exceed thirty days under our statute, and a legislative act which provides for a longer detention of a child in a reformatory for that offense, if merely for the purpose of punishment, would be violative of § 14 of the Bill of Rights. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

§ **134-2. Purpose of the school.**—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent children of the State; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal children under the age of sixteen years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1907, c. 509, s. 2; 1907, c. 955, s. 1; C. S., s. 7314.)

Benefit of Child Detained.—The act creating the Stonewall Jackson Training School in its general scheme and purpose is for the benefit of a child detained therein. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

§ **134-3. Power to purchase land and locate school.**—The board of trustees shall select a suitable place outside of and away from any city, town, or village, for the location of such school, and they are empowered to purchase, at some suitable and convenient place in this State, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1907, c. 509, ss. 2, 15; C. S., s. 7315.)

§ **134-4:** Repealed by Session Laws 1943, c. 776, s. 12.

§ **134-5. Application of funds; account required.** — All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation, and maintenance of the school for the training and the moral and industrial development of such delinquent children, and in securing homes for them; and in case the trustees receive or are allowed any State aid for said school, it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1907, c. 509, s. 3; C. S., s. 7317.)

§ **134-6. Trustees to employ superintendent and assistants, and make regulations.**—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such reformatory under the provisions of this article, and not inconsistent therewith. (1907, c. 509, s. 8; C. S., s. 7318.)

§ **134-7. Treasurer and superintendent to give bond.**—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the State of North Carolina, in such sums as may be named by the Governor and approved by the State Treasurer. (1907, c. 509, s. 7; C. S., s. 7319.)

§ **134-8. Powers of superintendent.**—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is intrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child, and the trustees shall have the right at any time to discharge the superintendent for cause. (1907, c. 509, s. 9; C. S., s. 7320.)

Cited in In re Watson, 157 N. C. 340, 72 S E. 1049 (1911).

§ **134-9. Governor to visit reformatory.** — It shall be the duty of the Governor of the State to visit the reformatory at least once in each year, and oftener if he deem it necessary, and to make such suggestions to the board of trustees as he may deem wise and for the best interests of the school or reformatory. (1907, c. 509, s. 10; C. S., s. 7321.)

§ **134-10. Courts may commit offenders to reformatory.**—The judges of the superior courts, recorders, or other presiding officers of the city or criminal courts of this State, shall have authority, and it shall be their duty, to sentence to the school all persons under the age of sixteen years convicted in any court of this State of any violation of the criminal laws: Provided, that such judge or other of said officers shall be of the opinion that it would be best for such person, and the community in which he may be convicted, that he should be so sentenced. Any commitment under this article, whether by judge or court, as hereinbefore provided, shall be full, sufficient, and competent authority to the officers and agents of the school for the detention and keeping therein of the child so committed. (1907, c. 509, ss. 11, 17; 1907, c. 955, s. 1; C. S., s. 7322.)

Meaning of "Convicted" and "Sentenced."—The provisions in the act creating the Stonewall Jackson Training School that the child committed thereto must be "convicted" and "sentenced" by the court, construing the act as a whole, does not mean that detention therein is an imprisonment as a punishment for a crime, but that the "conviction" is merely evidence that the child needs the care and nurture of the State, and that the sentence is an order of detention. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

Power to Commit Permissive.—It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statute be construed to permit such sentence, the power of the court to impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. State v. Smith, 213 N. C. 299, 195 S. E. 819 (1938).

§ **134-11. Governor may transfer prisoners to reformatory.** — The Governor of the State may by order transfer any person under the age of sixteen years from any jail, chain gang, or penitentiary in this State to such reformatory. (1907, c. 509, s. 12; C. S., s. 7323.)

§ **134-12. Department first established; sexes separated.**—The board of trustees shall first establish and maintain such departments of the manual training school as shall be adapted to the use of such class of boys as in the discretion of the board may be most in need of such care and training and will probably be most benefited thereby. When both sexes are admitted, the males and females shall be kept in separate apartments or buildings. (1907, c. 509, ss. 17, 18; C. S., s. 7324.)

§ **134-13. Industrial training provided.**—There shall be established and conducted on such lands as may be owned in connection with the school such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1907, c. 509, s. 4; C. S., s. 7325.)

§ **134-14. General instruction and training given.**—The officers of the school shall receive and take into it all children committed thereto by competent authority, or received therein as aforesaid, and shall cause all such children in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The children shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1907, c. 509, ss. 5, 14; C. S., s. 7326.)

§ **134-15. Ungovernable inmates removed.** — If it shall appear to the board ot trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the Governor of the State, and he may order such inmate to the State's prison or to the jail or chain gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1907, c. 509, s. 13; C. S., s. 7327.)

§ **134-16. Trustees to receive gifts for cottages.**—The board of trustees of the Stonewall Jackson Training School are hereby empowered to receive specific gifts from individuals or other sources for the exclusive purpose of erecting and equipping cottages on the grounds of the institution under such rules and regulations as may be fixed by the said board of trustees. (Ex. Sess. 1920, c. 48, s. 1; C. S., s. 7328(a).)

§ **134-17. Boys from counties making gifts; designation of cottage.**—When such gifts, sufficient to erect or to erect and equip a cottage sufficient to accommodate thirty boys, are received from individuals or other sources from any given county of the State, the trustees of the Stonewall Jackson Training School may enter into an obligation to receive and maintain in the institution only according to their fixed rules and regulations for entrance, maintenance and discharge, a number of boys from the said county equal to the number which may be accommodated in such building. Such cottage may be designated .... county cottage. (Ex. Sess. 1920, c. 48, s. 2; C. S., s. 7328(b).)

§ **134-18. Cottages erected by two or more counties.**—Should two or more counties desire to combine for the purpose of erecting such buildings, the same may be done under like conditions as stated in § 134-17, and such cottage may be known by the names of the counties so combining. (Ex. Sess. 1920, c. 48, s. 3; C. S., s. 7328(c).)

§ **134-19**: Repealed by Session Laws 1943, c. 543.

§ **134-20. Contributions from public funds; bond issues.**—It shall be lawful for county commissioners or the governing bodies of cities and towns to contribute from the public funds such amounts as they may deem proper for the purpose stated in §§ 134-17 and 134-18, and such funds may be lawfully devoted from any public funds of said bodies or secured by bond issue under such rules of issue as may be ordained by said boards of county commissioners or governing bodies of towns and cities. (Ex. Sess. 1920, c. 48, s. 4; C. S., s. 7328(e).)

§ **134-21. Cherokee Indians admitted.**—The governing authorities of the Stonewall Jackson Training School at Concord and the State Home and Industrial School for Girls at Samarcand are hereby authorized and directed to make proper provisions for admitting delinquent boys and girls respectively of the Cherokee Indian Race of Robeson County to these institutions under the same rules and regulations as are now provided for admitting delinquent boys and girls of the white race: Provided, however, that the boys and girls so admitted shall be separated from the white inmates of the said institutions. (1933, c. 490, s. 1.)

Article 2.

State Home and Industrial School for Girls.

§ **134-22. Incorporation and name.** — A corporation to be known and designated as the State Home and Industrial School for Girls is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1917, c. 255, s. 1; C. S., s. 7329; 1937, c. 147, s. 1.)

Editor's Note.—Prior to the 1937 amendment the name of the institution was "State Home and Industrial School for Girls and Women".

§ **134-23**: Repealed by Session Laws 1943, c. 776, s. 13.

§ **134-24. Power to purchase land and erect buildings.**—The board of managers is authorized to secure by gift or purchase suitable real estate within the State, not less than fifty acres, at such place as the board may deem best, and with the money or other property which the corporation may have received for that purpose, either by donations from individuals or by appropriation from the State, the board shall proceed to erect on such real estate buildings suitable for carrying out the purposes for which the corporation is created. (1917, c. 255, s. 3; C. S., s. 7331.)

§ **134-25. Power of control.**—The board of managers shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of managers shall consitute a board of parole of the institution and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1917, c. 255, s. 4; C. S., s. 7332.)

§ **134-26. Appointment of officers; compensation; bylaws.** — The board of managers shall appoint from among its members a president, a secretary, and a treasurer, who shall hold office for one year from the date of appointment; and if the board deem it proper to do so, the office of secretary and treasurer may be combined in one. The board shall also appoint a superintendent, who shall be a woman of experience and training. The board shall fix the compensation of the superintendent and all officers and employees of the institution, and shall prescribe the duties of each. The board shall further adopt such bylaws as, in the judgment of the board, may be necessary, fixing the time and place of the meetings of the board and making such other provisions as may be necessary for the proper management of the institution. (1917, c. 255, s. 5; C. S., s. 7333.)

§ **134-27. Persons committed to the reformatory; time of detention.** —Any girl who may come or be brought before any court of the State, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: Provided, such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution; and provided further, that before sentencing such person to confinement in the institution the court shall ascertain whether the institution is in position to care for such person; and it shall be at all times within the discretion of the board of directors as to whether the board will receive any person in the institution. No commitment shall be for any definite term, but any person so committed may be paroled or discharged at any time after her commitment by the board of managers, but no inmate shall in any case be detained longer than three years: Provided, that when any girl under twenty-one years of age shall have been committed to the institution the trustees shall have the sole right and authority to keep, restrain and control her until she is twenty-one years old, or until such time as they shall deem proper for her discharge, under such proper and humane rules and regulations as may be adopted by the trustees. When any such person shall come before any court for the purpose of confessing guilt or for trial, the court shall, as far as feasible and as far as consistent with public policy, give a private hearing, and in all respects avoid unnecessary publicity in connection with the proceedings before the court. (1917, c. 255, ss. 6, 12; C. S., s. 7334; Ex. Sess. 1921, c. 69; 1937, c. 147, s. 2.)

Cross Reference. — As to admission of Cherokee Indians, see § 134-21.

Editor's Note. — The provision allowing the restraining of girls under twenty-one was inserted by the 1921 amendment.

The 1937 amendment struck out the words "or woman" formerly appearing as the third and fourth words of this section.

§ **134-28. Delivery of inmates to institution; expenses.**—It shall be the duty of the county authorities of the county from which any girl or woman is sent to the home, or the city authorities, if any girl or woman is ordered to be sent to the home by any city court, to see that such girl or woman is safely and duly delivered to the home, and to pay all the expenses incident to her conveyance and delivery to the home. (1919, c. 122; C. S., s. 7335.)

§ **134-29. Voluntary application for admission; care of children.**— In addition to caring for such persons as may be committed to the institution by order of court, the board of managers may, in their discretion, receive into the institution any such person who may have in writing confessed herself guilty of any offense or any wayward conduct and may in writing express her desire to become an inmate of the institution; but the board shall not admit any such person unless upon examination of such person, freely and voluntarily held under the direction of the board, the board shall conclude that confinement in the institution will probably aid in the reformation of such person. Any person becoming an inmate of the institution under the provisions of this section shall be subject to the same rules and regulations as those who have been committed by order of court, and shall be detained for such time as the board, in its judgment, may deem best, not exceeding, however, the term of three years. And it shall further be the duty of the board of managers to make suitable provision for the care and maintenance of children born in the institution, and also of the infant children that any woman may have when she is committed to the institution. (1917, c. 255, s. 7; C. S., s. 7336.)

§ **134-30. Law as to juvenile delinquents applied.**—The provisions of the chapter pertaining to the reclamation and training of juvenile delinquents shall apply to young girls, and any court before whom a young girl is brought pursuant to the provisions of said chapter may be by order of court placed in the institution herein established, and shall be subject to all the provisions of law relating thereto: Provided, however, that no girl shall be admitted to the institution under this provision without the previous consent of the board of managers. (1917, c. 255, s. 8; C. S., s. 7337.)

§ **134-31. Discharge on parole; arrest for escape or violation of parole.**—The board of managers may conditionally discharge any person at any time, and if any such person shall violate any condition of her parole or shall violate any condition upon which she has been discharged, or if any inmate escape from the institution, the board of managers may cause any such person to be rearrested and returned to the institution and be detained therein for the unexpired portion of her term, dating from the time of her parole, conditional discharge, or escape. The board of managers is empowered to issue to any person designated by the board a commitment signed by the president and attested by the secretary, and having attached thereto the common seal of the corporation, by the terms of which commitment such person may be authorized and empowered to apprehend any such person who may have violated her parole or any condition of her discharge or that may have escaped, and carry such person back to the institution. Such commitment shall briefly state the reason for the issuance of the same, and the person designated to execute the same may execute it in any county in the State. (1917, c. 255, s. 9; C. S., s. 7338.)

§ **134-32. Industrial training; compensation; power to punish.**—The board of managers is authorized and empowered to establish and maintain within the institution an industrial school, and shall provide for the safekeeping and employment of the inmates for the purpose of teaching each of them a useful trade or profession and improving her mental and moral condition. If the board of managers sees fit, they may pay each inmate reasonable compensation for labor performed, after deducting such sum as they may deem reasonable for necessary expenses of her maintenance and discipline. To secure the safekeeping, obedience, and good order of the inmates, the superintendent shall have the same power as to such inmates as keepers of jails and other penal institutions possess as to persons committed to their custody. (1917, c. 255, s. 10; C. S., s. 7339.)

§ **134-33. Unlawful acts of inmates and others; escape; prostitution, etc.**—It shall be unlawful:

(a) For any inmate of the State Home and Industrial School for Girls and Women to escape from said school, or for any person to aid and abet any inmate to escape therefrom;

(b) For any person to advise, or solicit, or to offer to advise or solicit, any inmate of said school to escape therefrom;

(c) For any person to transport, or to offer to transport, in automobile or other vehicle or conveyance, any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees acting under the superintendent and teachers thereof;

(d) For any person to engage in, or to offer to engage in prostitution with any inmate of said school;

(e) For any person to receive, or to offer to receive any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(f) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable her to conceal her identity. (Ex. Sess. 1920, c. 40, s. 1; C. S., s. 7343(a).)

§ **134-34. "Inmate" and "prostitution" defined.**—The term "inmate" as used in § 134-33 shall be construed to include any and all girls committed to, or received into said State Home and Industrial School for girls under the provisions of this article; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse. (Ex. Sess. 1920, c. 40, s. 2; C. S., s. 7343(b).)

§ **134-35. Punishment for violation of § 134-33.** — Any person who shall knowingly and wilfully violate any one of the provisions of § 134-33 shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (Ex. Sess. 1920, c. 40, s. 3; C. S., s. 7343(c).)

ARTICLE 3.

Industrial Farm Colony for Women—Dobb's Farms.

§ **134-36. Name and establishment.**—A State institution for women to be known as Dobb's Farms, is hereby established. (1927, c. 219, s. 1; 1945, c. 847.)

Editor's Note. — The 1945 amendment changed the name of the Industrial Farm Colony for Women to Dobb's Farms.

§ **134-37:** Repealed by Session Laws 1943, c. 776, s. 14.

§ **134-38. Located in healthful section.**—The board of directors is authorized to use for the purpose of said institution, any site already owned by the State, when approved by the Governor and Council of State. Such land shall be located in a healthful section of the State and shall have natural drainage and adequate natural water supply. It shall also include woodland and arable land to the end that, as far as practicable, the food for the inmates may be produced on such land. The farm must also be accessible by rail or road to all sections of the State. (1927, c. 219, s. 3.)

§ **134-39. Plans for buildings.**—The directors shall cause to be prepared plans and specifications for remodeling or erecting on such site necessary buildings for a suitable plant for the institution. The directors shall furnish and equip the same ready for use. Contracts shall be made by the directors and those calling for an expenditure of over five hundred dollars shall be duly advertised and competitive bids received thereon, but whenever possible convict labor shall be used, the compensation for such to be agreed upon by the directors and State Highway and Public Works Commission. When such buildings have been prepared and equipped, and the necessary staff of officers has been organized, the directors shall make announcement that the institution is ready for the reception of inmates. (1927, c. 219, s. 4.)

§ **134-40. Authority of directors.**—The directors shall have control of the institution; determine the policy of the same and make necessary rules for the discipline, instruction, mental and physical examination and treatment of the inmates and for the labor of the inmates; cause to be kept proper records, including those of inmates; hold regular meetings, at least quarterly, at said institution and audit the accounts of the superintendent quarterly. They shall report biennially to the Governor the general and financial condition of said institution, with such recommendations as they desire to make. (1927, c. 219, s. 5.)

§ **134-41. Power to appoint and remove.**—The directors shall appoint and remove at their discretion, a superintendent of said institution who shall be a woman of liberal education and special training and who has had experience in institutional management or social work, not of their number, and who, before entering upon the duties of her office, shall be sworn to a faithful performance of her duties. The superintendent shall receive such compensation as shall be fixed by the directors and shall reside at said institution. (1927, c. 219, s. 6.)

§ **134-42. Management of institution.**—The superintendent shall manage such institution and have control over the inmates thereof, and shall make rules and regulations for the administration of said institution, subject to the approval of the board of directors. The superintendent shall, also, subject to the approval of the board of directors, determine the number, select, appoint and assign duties of all subordinate officers of said institution, who shall be women, as far as practicable, and shall be sworn to a faithful performance of their duties. As soon as the size of the institution demands it, a resident woman physician shall be employed. The superintendent may remove any officer appointed by her. (1927, c. 219, s. 7.)

§ **134-43. Women subject to committal.**—Women sixteen years of age and older belonging to the following classes and who are not eligible for admission to Samarcand may be committed by any court of competent jurisdiction to said institution, and not otherwise; persons convicted of, or who plead guilty to the commission of misdemeanors, including prostitution, habitual drunkenness, drug-using, disorderly conduct. The board of directors may in its discretion receive and detain as an inmate of the institution any woman or girl, not otherwise provided for, who may be sentenced by any court of the United States within this State: Provided, that no woman who has been adjudged epileptic or insane by a competent authority, or is of such low mentality or is so markedly psychopathic as to prevent her from profiting by the training program of the institution, shall be admitted. Immediately upon commitment, a careful physical and mental examination by a competent physician and a psychologist shall be made of each person committed. The court imposing sentence upon offenders of either class shall not fix the term of such commitment except as hereinafter provided. Commitment to said institution shall be made within one week after sentence is imposed, by the sheriff when sentenced by the Superior Court, and by a police officer when sentence is imposed by any city, town or inferior court, but no offender shall be committed to such institution without being accompanied by a woman in addition to the officer. The expenses of such commitment shall be paid the same as commitments to other penal institutions in the State. The trial court shall cause a record of the case to be set with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this article, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment. (1927, c. 219, s. 8; 1937, c. 277.)

Editor's Note. — The 1937 amendment added the proviso to the second sentence.

§ **134-44. Parole.**—Any inmate of the institution may, upon recommendation of the board of directors to the Governor, be allowed to go on parole under the following conditions: That she is in good physical condition, has ability to earn an honest living, has a satisfactory institutional record, based on the merit system, and a proper home to which she may go, or that suitable employment has been secured in advance. Each person paroled or discharged from said institution shall be given, if the superintendent deems it best, suitable clothing, transportation expenses and a sum of money not exceeding thirty dollars. Authority is conferred on said board of directors to establish such rules and regulations as it may deem necessary, setting forth the conditions upon which inmates may be discharged or recommended for parole, and to enforce such rules and regulations. (1927, c. 219, s. 9.)

§ **134-45. Effect of parole.**—While upon parole, each inmate of said institution shall remain in the legal custody and under the control of the board of directors, and subject at any time to be taken to said institution for any reason that shall seem sufficient to said board. Whenever any paroled inmate of said institution shall violate her parole and be returned to the institution, she may be required to serve the unexpired term of her maximum sentence, including the time she was out on parole or any part thereof, in the discretion of the board of directors, or she may be paroled again if said board of directors shall so recommend. The request of said board of directors or of any person authorized by the rules of said board, shall be sufficient warrant to authorize any officer of said institution or any officer authorized by law to serve criminal process within the State, to return any inmate on parole into actual custody; and it shall be the duty of police officers, constables and sheriffs to arrest and hold any paroled inmate when so requested, without any written warrant, and for the performance of such duty, the officer performing the same, except officers of said institution, shall be paid by the board of directors of said institution out of the institution funds such reasonable compensation as is provided by law for similar services in other cases. (1927, c. 219, s. 10.)

§ **134-46. Escape of inmate.**—If any inmate shall escape from said institution or from any keeper or officer having her in charge or from her place of work while engaged in working outside the walls of said institution, she shall be returned to said institution when arrested, and may be disciplined in such manner as the board of directors may determine. Any person who shall advise, induce, aid or abet any woman committed to the State Industrial Farm or to the charge or guardianship of the directors of said institution to escape from said farm, or from the custody of any person to whom such women shall have been entrusted by said directors or by their authority, shall be fined not more than five hundred dollars or imprisoned not more than one year, and any woman who shall have so escaped may, whether the limit of her original sentence shall have expired or not, be arrested and detained without warrant, by any officer authorized to serve criminal process, for a reasonable time to enable the superintendent or a director of said farm, or a person authorized in writing by the superintendent of said farm or said directors and provided with the mittimus by which such woman was committed, or with a certified copy thereof, to take such woman for the purpose of returning her to said institution, and the officer arresting her shall be paid by the State a reasonable compensation for her arrest and keeping. Any woman lawfully committed to said institution who shall escape therefrom may be imprisoned in said institution for not more than one year from the expiration of the term for which she was originally committed. Prosecutions under this article may be instituted in any county in which such woman may be arrested. (1927, c. 219, s. 11.)

§ **134-47. Recommendation for discharge.**—If it shall appear to said board of directors, that any inmate on parole, although not having completed her maximum term, has maintained a satisfactory parole record, and will continue to lead an orderly life if discharged, said board may recommend to the Governor that such inmate be discharged from said institution. (1927, c. 219, s. 12.)

§ **134-48. General and industrial training.**—The board of directors, in making rules and regulations for the government of said institution, shall make provision for a system of general and industrial training, including useful trades and home economics, and for proper recreation facilities. (1927, c. 219, s. 13.)

ARTICLE 4.

Reformatories or Homes for Fallen Women.

§ **134-49. Counties and cities authorized to establish reformatories.**—In all cities that have a population of over twenty thousand people the governing body of such city and the board of county commissioners of the county in which the city is situated are authorized and empowered to establish jointly a reformatory or home for fallen women. (1917, c. 264, s. 1; C. S., s. 7344.)

§ **134-50. Power to purchase land, erect buildings, and maintain the institution.**—The said city and county are authorized jointly to purchase a tract of land, not exceeding one hundred acres, for the use of such reformatory or home, the title to which shall be vested jointly in the city and county, and the reformatory shall be managed jointly by such city and county. The city and county are authorized to build such buildings and improvements on the land so purchased, to keep and maintain such reformatory or home for fallen women, and to make all necessary appropriations for buildings and keeping and caring for the inmates thereof: Provided, however, the cost of said buildings shall not exceed the sum of forty thousand dollars, and the maintenance and upkeep and operating expenses per annum shall not exceed the sum of twenty thousand dollars. (1917, c. 264, s. 1; 1919, c. 33; C. S., s. 7345; 1925, c. 176.)

Editor's Note.—By the 1925 amendment the maximum cost allowed for the buildings was raised from twenty thousand dollars to forty thousand dollars, and the maximum cost of operating was raised from ten thousand dollars to twenty thousand dollars.

§ **134-51. Board of directors elected; officers; regulations.** — The governing body of the city, at its annual election of officers for the city in May, shall elect for the term of two years two men as directors for such institution, and the board of county commissioners shall, in the same year, at their meeting in May, elect two men as directors for such institution to serve for two years. The mayor of the city and the chairman of the board of county commissioners shall be ex officio members of such board with equal right to vote, and the six directors shall have entire management and control of such reformatory for fallen women. The board shall elect one of their number president, and also elect a secretary and treasurer, and they shall have and exercise the usual powers incident to such officers. They shall make such rules and regulations as they see fit for the government and management of such institution. The directors shall take an oath to perform their service faithfully, and they shall continue as directors until their successors are duly elected and qualified. (1917, c. 264, s. 1; C. S., s. 7346.)

Local Modification.—Mecklenburg: 1931, c. 253.

§ **134-52. Advisory board of women.**—The directors are authorized to appoint as an advisory board not more than twenty-five nor less than twelve discreet women to supervise and attend to the actual running of such institution. The advisory board of women shall be appointed for such term, not exceeding four years, as the directors may in their discretion think best. (1917, c. 264, s. 1; C. S., s. 7347.)

§ **134-53. Special tax authorized.**—To assist in carrying out the provisions of this article the county commissioners and governing body of the city shall each levy annually a tax not exceeding two cents on each one hundred dollars valuation of real and personal property in such city and county respectively. The tax shall be levied and collected in the same manner as the other county and city taxes are collected. This fund shall be used exclusively for the purposes contemplated and set forth in this article, and shall be kept separate from all other funds. (1917, c. 264, s. 2; C. S., s. 7348.)

§ **134-54. Employment of superintendent and assistants; rules and regulations.**—The board of directors shall have the management and control of the institution and shall have authority to employ superintendents and such other assistants as they may deem necessary; to fix their salaries, to define their duties, and to discharge any employee; and to make any and all rules and regulations as they may deem necessary for the management and conducting of the institution under the provisions of this article and not inconsistent therewith. (1917, c. 264, s. 5; C. S., s. 7349.)

§ **134-55. Power of superintendent.**—The superintendent of the institution employed by the board of directors shall have the right to require obedience from all the inmates of the institution, and to use such lawful measures as may be necessary to enforce the same to the same extent as the superintendent of any other penal institution in this State is empowered in like case. (1917, c. 264, s. 6; C. S., s. 7350.)

§ **134-56. Physician employed.**—For the purpose of treating the inmates of the institution for the whiskey, drug, or other habit or disease, the directors shall employ a competent physician or physicians to attend and treat said inmates. (1917, c. 264, s. 14; C. S., s. 7351.)

§ **134-57. Purpose of home; persons to be admitted.**—The reformatory or home shall be conducted for the correction of fallen women, and for the moral and industrial training of criminally delinquent women and girls, by teaching them useful trades and domestic science, etc.; and the directors may, in their discretion, receive into the institution such women or girls as shall be committed thereto by the judge or other presiding officer of any superior or recorder's court held anywhere in the State of North Carolina within that judicial district in which county the reformatory is now or may hereafter be situated, as hereinafter provided: Provided, that the reasonable cost of maintaining any woman or girl committed to such institution from any county other than that in which such reformatory shall be located shall be borne by the county from which such person shall have been committed. (1917, c. 264, s. 3; C. S., s. 7352.)

§ **134-58. Right of directors to control inmates.**—The board of directors shall have the sole right to keep, restrain, and control the persons committed or otherwise received into the institution as hereinafter provided, during the term of their commitment thereto, under such proper and humane rules and regulations as may be adopted by the directors. (1917, c. 264, s. 4; C. S., s. 7353.)

§ **134-59. Power of courts to commit persons to reformatory.**—When the institution is ready to receive and care for inmates, the board of directors shall notify the clerks of the courts hereinbefore specified; and the judges or other presiding officers of the superior, recorders', county, or other courts having like criminal jurisdiction, in that judicial district in which the reformatory is now or may hereafter be situated and established, shall have authority to sentence to the reformatory for fallen women for a term of not less than thirty days nor more than one year all those women who are convicted in their several courts of drunkenness or the drug habit, where it appears that they are habitual drunkards or drug fiends; and the judges or other presiding officers of such courts shall have authority to sentence to the "Reformatory for Women" for a term of not less than thirty days nor more than three years all female persons convicted in the said courts of any violation of the criminal laws of this State prohibiting and punishing fornication and adultery, keeping a house of ill-fame, or a bawdy-house, or disorderly house, or violating the criminal laws of this State as to chastity or vagrancy: Provided, that such judge or other presiding officer as aforesaid shall be of the opinion that it would be best for such persons and the community in which such persons may be convicted hereunder. The order of commitment of such judge or other presiding officer as hereinbefore provided shall be full, sufficient, and competent authority to the officers and agents of the institution for the detention and keeping therein of the persons so committed: Provided, that nothing herein shall authorize a justice of the peace to impose a sentence of longer than thirty days: Provided further, that judges and recorders holding courts in counties other than that in which the reformatory is located shall have power to commit such persons to the institution on the conditions heretofore set forth in this article. (1917, c. 264, s. 7; 1919, c. 302; C. S., s. 7354.)

§ **134-60. Clerk of superior court may commit in certain cases.**—The clerk of the superior court shall have power and authority to commit to the institution for treatment any female person found by such clerk to be a habitual drunkard or habitually addicted to the drug habit, as such clerk is now authorized by law to commit to the hospital for the insane or to a private hospital, persons adjudged to be of unsound mind, and to that end such clerk of the court shall have all the power and authority conferred upon him by law with reference to insane persons. (1917, c. 264, s. 15; C. S., s. 7355.)

§ **134-61. Voluntary application for admission.**—Any person fulfilling the requirements as to sex and age as hereinbefore provided may, upon written application to the directors, setting forth that the applicant wishes to reform and the term for which such applicant wishes to be detained, be admitted to such institution, in the discretion of the board of directors; and any inmate so admitted shall be subject to the same restraint, control, and treatment as persons committed thereto, and such applications signed by the applicants shall be full and sufficient authority for the detention and control of the applicants in the institution for and during the full term as set out in the application: Provided, that the directors may, in their discretion, discharge any inmate so admitted at any time. (1917, c. 264, s. 8; C. S., s. 7356.)

§ **134-62. Instruction and training to be given.**—The officers of the institution shall take into the reformatory or home all persons committed thereto by competent authority, and shall cause all such persons to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities, and to be taught such useful trades and occupations as the board may direct; and such persons shall perform such labor as the principal and other superintending officers may order, subject to the discretion of the board of directors. All inmates of the institution shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and be industrious. (1917, c. 264, s. 11; C. S., s. 7357.)

§ **134-63. Industrial training; assistance to discharged inmates.**—There shall be established and conducted on such lands as may be owned in connection with the institution such useful pursuits as the board of directors may deem expedient, so as to keep regularly at work all able-bodied inmates thereof, and as far as may be practicable the board of directors shall assist the inmates, when paroled or discharged, in procuring suitable homes and honorable and respectable employment. (1917, c. 264, s. 12; C. S., s. 7358.)

§ 134-64. Discharge on parole; rearrest for escape or violation of parole.—The board of directors of the institution may detain therein, under the rules and regulations adopted by them, any person legally committed thereto, according to the terms of sentence and commitment; and with the approval and concurrence of the Governor of the State first had and obtained, may conditionally parole or discharge such person at any time prior to the expiration of the term of commitment. If, however, any inmate shall escape or be conditionally paroled, or be conditionally discharged from the institution as aforesaid, and violate and break the condition of her parole or conditional discharge, the board of directors may, by and through their superintendent, cause her to be arrested and returned to the institution, to be detained therein for the unexpired portion of the commitment, dating from the time of escape or parole or conditional discharge. The superintendent of the institution, or any employee thereof under his control and direction, may rearrest, without a warrant, any inmate of the institution who may have escaped therefrom, in any county of this State, and shall forthwith convey her back to the institution from which she escaped; and a justice of the peace or any judicial officer may cause an escaped inmate from the institution to be rearrested and held in custody until she can be returned to the institution as in case of the first commitment thereto. Any person conditionally paroled or conditionally discharged from the institution may be also rearrested and returned thereto upon a warrant issued by the chairman of the board of directors, the warrant specifying briefly the reason for such rearrest and return, and such warrant of rearrest shall be directed and delivered to a person employed by the board of directors, and may be executed by such person in any county of this State where the paroled or conditionally discharged inmate may be found. (1917, c. 264, s. 13; C. S., s. 7359.)

§ 134-65. Ungovernable inmates removed. — If it shall appear to the board of directors that any inmate of the institution is or becomes ungovernable, or is exerting an unwholesome influence over any other inmate of the institution, it shall be their duty to certify the same to the Governor of the State, and he thereupon may order such inmate to the State's Prison or to the county jail or to the workhouse in the county in which the inmate was convicted and sentenced, where such person shall serve out her unexpired term of imprisonment. (1917, c. 264, s. 10; C. S., s. 7360.)

§ 134-66. Reports to be made by directors; inspection by grand jury.—The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. It shall be the duty of the grand jury to personally visit and inspect such institutions once every six months, and report to the court the conditions prevailing therein. (1917, c. 264, s. 9; C. S., s. 7361.)

ARTICLE 5.

Eastern Carolina Industrial Training School for Boys.

§ 134-67. Corporation created; name; powers.—A corporation to be known and designated as the Eastern Carolina Industrial Training School for Boys is hereby created, and as such corporation and under said name it may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified. (1923, c. 254, s. 1; C. S., s. 7362(a).)

§ 134-68: Repealed by Session Laws 1943, c. 776, s. 15.

§ 134-69. Establishment and operation of school; boys subject to committal; control; term of detention.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent white boys of the State; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1923, c. 254, s. 3; C. S., s. 7362(c); 1937, c. 116.)

Editor's Note.—Prior to the 1937 amendment the age limit was eighteen years.

§ 134-70. Selection of location; power and size of purchase.—The board of trustees shall select a suitable place outside of and away from any city, town or village for the erection of such school, such location to be in the eastern part of North Carolina not farther west than twenty miles west of the main line of the Atlantic Coast Line Railroad, and said board of trustees is empowered to purchase, at some suitable and convenient place, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1923, c. 254, s. 4; C. S., s. 7362(d).)

§ 134-71. Receipts expended for school; accounting and reports.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation and maintenance of the school for the training and the moral and industrial development of such delinquent boys, and in securing homes for them; and it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1923, c. 254, s. 6; C. S., s. 7362(f).)

§ 134-72. Bonds of superintendent and treasurer.—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the State of North Carolina, in such sums as may be named by the Governor and approved by the State Treasurer. (1923, c. 254, s. 7; C. S., s. 7362(g).)

§ 134-73. Enforcement of discipline; discharge of superintendent.—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is entrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child; and the trustees shall have the right at any time to discharge the superintendent for cause. (1923, c. 254, s. 8; C. S., s. 7362(h).)

§ 134-74. Transfer by order of Governor.—The Governor of the State may by order transfer any boy under the age of eighteen years from any jail, chain gang or penitentiary in this State to such school. (1923, c. 254, s. 10; C. S. s., 7362(j).)

§ 134-75. Work to be conducted.—There shall be established and conducted on such lands as may be owned in connection with the school, such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1923, c. 254, s. 11; C. S., s. 7362(k).)

§ **134-76. Boys to be received; subjects of instruction.**—The officers of the school shall receive and take into it all boys committed thereto by competent authority, or received therein as aforesaid, and shall cause all such boys in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The boys shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1923, c. 254, s. 12; C. S., s. 7362(l).)

§ **134-77. Management and control of school; rules and regulations.**—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such school under the provisions of this article and not inconsistent therewith. (1923, c. 254, s. 13; C. S., s. 7362(m).)

§ **134-78. Certificate for removal from school; order of removal.**—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the Governor of the State, and he may order such inmate to the State Prison or to the jail or chain gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1923, c. 254, s. 14; C. S., s. 7362(n).)

Article 6.

Morrison Training School.

§ **134-79. Creation of corporation; name; powers.**—A corporation, to be known and designated "The Morrison Training School," is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of negro boys which may be received by said corporation. (1921, c. 190, s. 1; C. S., s. 5912(a); 1937, c. 146.)

§ **134-80:** Repealed by Session Laws 1943, c. 776, s. 11.

§ **134-81. Powers of board; board of parole.**—The board shall undertake as expeditiously as possible the business of selecting a location and preparing for the opening and maintenance of the Morrison Training School. The board shall have power to appoint and dismiss at will a superintendent and other employees, to make such rules for its own meetings and guidance as it deems necessary; have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein, and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall constitute a board of parole of the institution, and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe, and to retake them upon failure to comply with any requirement of parole. (1921, c. 190, s. 3; C. S., s. 5912(c); 1943, c. 776, s. 11.)

Editor's Note. — The 1943 amendment deleted the former first sentence relating to the organization of the board of trustees.

§ **134-82. Delinquents committed to institution; cost; age limit.** — Delinquent negro boys, under the age of sixteen years, may be committed to the institution by any juvenile, State, or other court having jurisdiction over such boy, but no boy shall be sent to the institution until the committing agency has received notice from the superintendent that such person can be received. The cost of sending inmates shall be paid by the county or municipality sending the same, as the case may be. In special cases where the public good would seem to be subserved thereby the board shall have the right, upon the request of any court of proper jurisdiction, to receive an inmate above the age of sixteen, but this shall be a matter wholly within the discretion of the board. When any commitment to the institution is made, it shall not be for any specified time, but may continue or terminate at the discretion of the board, not to exceed the age of majority of the inmate. (1921, c. 190, s. 4; C. S., s. 5912(d).)

Power to Commit Permissive.—It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statutes be construed to permit such sentence, the power of the court to impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. State v. Smith, 213 N. C. 299, 195 S. E. 819 (1938).

§ **134-83. Selection of location of institution; title.**—The location of the institution shall be recommended by the board of trustees and approved by the Governor. In the event the location selected is upon property now owned by the State or any other State institution, then the governing body in whom the title is vested is hereby directed and authorized to transfer title to the board of trustees of the Morrison Training School, and turn over to them all or such portions of the said property as the Governor may direct, without compensation, as the Governor may deem proper for the best interests of the State. (1921, c. 190, s. 5; C. S., s. 5912(e).)

§ **134-84. Apportionment of admissions; private or municipal contributions.**—In receiving inmates of the institution, the trustees shall distribute such admissions as near as may be in relation to the negro population of the several counties until all the maintenance appropriation from the State is exhausted. If after such maintenance fund is exhausted it be found possible to provide housing space and control for additional inmates, then the trustees may receive such additional number of inmates as can be cared for upon the payment by private persons or municipal or county authorities of the actual cost of the maintenance of such inmates. County and municipal authorities are hereby given authority to pay such sums in their discretion. (1921, c. 190, s. 6; C. S., s. 5912(f).)

ARTICLE 6A.

State Training School for Negro Girls.

§ **134-84.1. Creation and name.**—An institution, to be known and designated as State Training School for Negro Girls, is hereby created, and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1943, c. 381, s. 1.)

§ **134-84.2. Under control of North Carolina Board of Correction and Training.** — The said institution shall be under the control of the North

Carolina Board of Correction and Training, and wherever the words "board," "directors" or "board of directors" are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina Board of Correction and Training, and said board shall exercise the same powers and perform the same duties with respect to the State Training School for Negro Girls as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1943, c. 381, s. 2.)

§ **134-84.3. Authority to secure real estate and erect buildings.**—The board of directors, with the approval of the Governor and Council of State, is authorized to secure by gift or purchase suitable real estate within the State at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased nor any commitments made for the erection or permanent improvement of any buildings involving the use of State funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the General Assembly; but this prohibition shall not prevent the directors from purchasing or improving real estate from funds that may be donated for the purpose. (1943, c. 381, s. 3.)

§ **134-84.4. Operation of institution before permanent quarters established.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary use of any State-owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of the State Training School for Negro Girls and which is not occupied or needed by said institution or agency, is hereby authorized to turn such real estate over to the directors of the State Training School for Negro Girls upon such terms as may be mutually agreed upon. (1943, c. 381, s. 4.)

§ **134-84.5. Powers and duties of board of directors.**—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of directors shall constitute a board of parole of the institution and shall have the power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1943, c. 381, s. 5.)

§ **134-84.6. Superintendent of institution.** — The board of directors shall appoint a superintendent of the institution, who shall be a woman of professional social work training and experience and who shall meet the personnel standards, established by the State Board of Charities and Public Welfare, and may fix the compensation of the superintendent, subject to the approval of the Budget Bureau, and may discharge the superintendent at any time for cause. (1943, c. 381, s. 6.)

§ 134-84.7. Committal and delivery of girls to institution; no inmate detained after becoming of age.—Any negro girl under the age of sixteen years, who may come or be brought before any juvenile court of the State or other court of competent jurisdiction, and may be found by such court to be in need of institutional training, may be committed by such court to the institution for an indefinite period: Provided, that such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of the institution: Provided, further, that before committing such person to the institution, the court shall ascertain whether the institution is in a position to care for such person; and that it shall be at all times within the discretion of the board of directors as to whether the board will receive any person into the institution. No commitment shall be for any definite term, but any person so committed may be conditionally released or discharged by the board of directors at anytime after commitment, but in no case shall any inmate be detained in the institution for a period longer than such time at which she may attain the age of twenty-one years. It shall be the duty of the county authorities of the county from which any girl is sent to the institution or the city authorities, if any is ordered to be sent to the institution by any city court, to see that such girl is safely and duly delivered to the institution, and to pay all the expenses incident to her conveyance and delivery to the institution. (1943, c. 381, s. 7.)

§ 134-84.8. Conditional release of inmates; final discharge. — The superintendent shall have power to grant a conditional release to any inmate of the institution under the rules adopted by the board of directors, and such conditional release may be terminated at any time by the written revocation of the superintendent, which written revocation shall be sufficient authority for any officer of the school or peace officer to apprehend any inmate named in such written revocation, in any county of the State, and to return such inmate to the institution. Final discharge of any inmate of the institution may be granted by the superintendent under rules adopted by the board of directors at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate shall arrive at her twenty-first birthday. (1943, c. 381, s. 8.)

§ 134-84.9. Contract to care for certain girls within federal jurisdiction.—The board of directors shall have power and they are hereby authorized, shall it be deemed necessary, to enter into a contract with the office of the United States Attorney General or such necessary federal agency, to keep, restrain, control, care, and train any negro girl under the age of sixteen years, being a citizen of the State of North Carolina, who may come within the jurisdiction of the several federal courts and who may fall within the classification hereinbefore set forth. Any such contract made under the authority and provisions of this article shall be for a period of not more than two years, and shall provide payments by the office of the United States Attorney General or such necessary federal agency to the institution for the care of any persons coming within the provisions of this article, which shall not be less than the current estimated cost per capita at the time of the execution of the contract, and all such financial provisions of any contract shall first, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contract authorized by this article shall be deposited in the State treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1943, c. 381, s. 9.)

Article 7.

Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ **134-85. Conditional release.**—The superintendent of the State Home and Industrial School for Girls, of the Stonewall Jackson Manual Training and Industrial School, of the Eastern Carolina Industrial Training School for Boys, and of the Morrison Training School for Negro Boys, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the State, and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1.)

Cited in In re Burnett, 225 N. C. 646, 36 S. E. (2d) 75 (1945).

§ **134-86. Final discharge.**—Final discharge of any inmate of any institution enumerated in § 134-85 may be granted by the superintendent of such institution, under rules adopted by the board of directors or managers, at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate arrives at his or her twenty-first birthday. (1937, c. 145, s. 2.)

Article 8.

Care of Persons under Federal Jurisdiction.

§ **134-87. Certain correctional institutions to make contracts with federal agencies for the care of persons under federal jurisdiction.**—The governing boards of the Stonewall Jackson Manual Training and Industrial School, Morrison Training School for Negro Boys, Eastern Carolina Training School, the State Home and Industrial School for Girls, and the State Industrial Farm Colony for Women may contract with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency for the care, keeping, correction, training, education, and supervision of delinquent children or other persons under the jurisdiction, custody, or care of the federal courts or of the said office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency, as authorized by the terms of the Federal Juvenile Delinquency Act of one thousand nine hundred thirty-eight, and may receive, accept, hold, train, and supervise such persons as may be received from said courts or department under the rules and regulations of the several and respective institutions as prescribed or as may hereafter be established by the said governing boards, provided, however that such contracts or subsequently established rules of care, procedure, and training, of those committed to said institutions, first shall have been approved by the State Board of Charities and Public Welfare. (1939, c. 166, s. 1.)

§ **134-88. Term of contract.** — Any contract made under the authority and provision of this article shall be for a period of not more than two years, and shall be renewable from time to time for a period of not to exceed two years. (1939, c. 166, s. 2.)

§ **134-89. Approval by North Carolina Budget Bureau; payments received under contracts.**—Any contracts entered into under the provisions of this article by the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency with any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract shall, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contracts authorized by this article shall be deposited in the State treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1939, c. 166, s. 3.)

ARTICLE 9.

State Board of Correction and Training.

§ 134-90. State Board of Correction and Training created. — There is hereby created a State Board of Correction and Training to be composed of nine members, all of whom shall be appointed by the Governor of North Carolina. The Commissioner of Public Welfare shall be an ex officio member without voting power.

The original membership of the Board shall consist of three classes, the first class to serve for a period of two years from the date of appointment, the second class to serve for a period of four years from the date of appointment, and the third class to serve for a period of six years from the date of appointment. At the expiration of the original respective terms of office, all subsequent appointments shall be for a term of six years, except such as are made to fill unexpired terms. Five members of the Board shall constitute a quorum.

Members of the Board shall serve for terms as prescribed in this section, and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the Board whenever, in his opinion, such removal is in the best public interest, and the Governor shall not be required to assign any reason for any such removal. (1947, c. 226.)

Editor's Note. — Session Laws 1947, c. 226, s. 1, rewrote this article which was codified from Session Laws 1943, c. 776, as amended by Session Laws 1945, c. 48, and formerly contained §§ 134-90 through 134-100. See 25 N. C. Law Rev. 404.

Section 2 of the act rewriting this article provides: "This article is not applicable to reformatories or homes for fallen women authorized by article 4, chapter 134 of General Statutes. Nothing contained in this article shall be construed to affect any of the provisions of §§ 134-49 through 134-66, the same being article 4 of chapter 134 of the General Statutes."

§ 134-91. Powers and duties of the State Board of Correction and Training.—The following institutions, schools and agencies of this State, namely, the Stonewall Jackson Manual Training and Industrial School, the State Home and Industrial School for Girls, Dobb's Farms, the Eastern Carolina Industrial Training School for Boys, the Morrison Training School, and the State Training School for Negro Girls, together with all such other correctional State institutions, schools or agencies of a similar nature, established and maintained for the correction, discipline or training of delinquent minors, now existing or hereafter created, shall be under the management and administrative control of the State Board of Correction and Training.

Wherever in §§ 134-1 to 134-48, inclusive, or in §§ 134-67 to 134-89, inclusive, or in any other laws of this State, the words "board of directors," "board of trustees," "board of managers," "directors," "trustees," "managers," or "board" are used with reference to the governing body or bodies of the institutions, schools or agencies enumerated in § 134-90, the same shall mean the State Board of Correction and Training provided for in § 134-90, and it shall be construed that the State Board of Correction and Training shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions, schools or agencies herein mentioned, and said powers and duties shall be exercised and performed as to each of the institutions by the State Board of Correction and Training herein provided for. The said Board shall be responsible for the management of the said institutions, schools or agencies and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, schools or agencies subject to the provisions of the Executive Budget Act, and said Board shall make report to the Governor annually, and oftener if called for by him, of the condition of each of the schools, institutions or agencies under its management and control, and shall make biennial reports to the Governor, to be transmitted by him to the General Assembly, of all moneys received and disbursed by each of said schools, institutions or agencies.

The State Board of Correction and Training shall have full management and control of the institutions, schools and agencies named in this article, and shall have power to administer these institutions, schools and agencies in the manner deemed best for the interest of delinquent boys and girls of all races. Similar provisions shall be made for white and negro children in separate schools. Indian children shall be provided for in a manner comparable to that afforded children of the white and negro races. Individual students may be transferred from one institution, school or agency to another, but this authority to transfer individual students does not authorize the consolidation or abandonment of any institution, school or agency. The Board of Correction and Training, subject to the approval of the Governor and the Advisory Budget Commission, is authorized to transfer the entire population at Dobb's Farms to the State Home and Industrial School for Girls and to utilize the present facilities at Dobb's Farms as a training school for negro girls.

The State Board of Correction and Training is hereby vested with administrative powers over the schools, institutions and agencies set forth in this article, together with all lands, buildings, improvements, and other properties appertaining thereto, and the Board is authorized and empowered to do all things necessary in connection therewith for the care, supervision and training of boys and girls of all races who may be received at any of such schools, institutions or agencies. (1947, c. 226.)

§ **134-92. Organization of the Board.**—The State Board of Correction and Training is hereby authorized and given full power to meet and organize, and from their number select a chairman and vice-chairman. The Commissioner of Correction hereinafter provided for in this article shall be executive secretary to the Board. All officers of the Board shall serve for a two-year period, which period shall be the same as the State's fiscal biennium. (1947, c. 226.)

§ **134-93. Meetings of the Board.**—The State Board of Correction and Training shall convene at least four times a year and at places designated by the Board. Insofar as practicable, the place of meetings shall rotate among the several schools and institutions. (1947, c. 226.)

§ **134-94. Executive committees.**—The State Board of Correction and Training shall select from its number an executive committee of three members. The powers and duties of the executive committee shall be prescribed by the Board and all actions of this committee shall be reported to the full Board at the next succeeding meeting.

In addition to the executive committee the Board may set up such other committees as may be deemed necessary for the carrying out of the activities of the Board. (1947, c. 226.)

§ **134-95. Bylaws, rules and regulations.**—The State Board of Correction and Training shall make all necessary bylaws, rules and regulations for its own use and for the governing and administering of the schools, institutions and agencies under its control. (1947, c. 226.)

§ **134-96. Commissioner of Correction.**—The State Board of Correction and Training is hereby authorized and empowered to employ a Commissioner of Correction who shall serve all schools, institutions and agencies covered by this article. The Board shall prescribe the duties and salary of the Commissioner of Correction, subject to the approval of the Director of the Budget. The Board may employ secretarial help and such other assistants as in its judgment are necessary to give effect to this article, subject, however, to the approval of the Director of the Budget.

The Commissioner of Correction shall be a person of demonstrated executive ability and shall have such special education, training, experience and natural ability in welfare, educational and correctional work as are calculated to qualify him for the discharge of his duties, such training shall include special study in the social sciences and adequate institutional and practical experiences; and he must be a person of good character. He shall devote his full time to the duties of his employment and shall hold no other office, except that he shall serve as secretary to the State Board of Correction and Training.

The salary of the Commissioner of Correction and his assistants and the expenses incident to maintaining his office, his travel expenses, and the expenses of the Board members shall be paid out of special appropriations set up for the State Board of Correction and Training. The State Board of Public Buildings and Grounds shall provide suitable office space in the city of Raleigh for the Commissioner and his staff. (1947, c. 226.)

§ **134-97. Compensation for members of the Board.**—The members of the State Board of Correction and Training shall be paid the sum of seven dollars ($7.00) per day and actual expenses while engaged in the discharge of their official duties. (1947, c. 226.)

§ **134-98. Election of superintendents.**—The State Board of Correction and Training shall elect a superintendent for each of the schools, institutions and agencies, covered by this chapter. Each superintendent shall be equipped by professional social work training and experience to understand the needs and problems of adolescent boys and girls, to administer an institutional program and to direct professional staff members and other employees. The superintendents of the several institutions, schools and agencies shall be responsible, with the assistance of the Commissioner of Correction, for the employment of all personnel. The superintendents of the several schools and institutions shall likewise have the power to dismiss any employee for incompetence or failure to carry out the work assigned to him.

The superintendents shall make monthly reports to the Commissioner of Correction on the conduct and activities of the schools, institutions or agencies, and on the boys and girls under their care, and such reports on the financial and business management of the schools, institutions or agencies as may be required by the Board of Correction and Training. (1947, c. 226.)

§ **134-99. Bonds for superintendents and budget officers.**—All superintendents and budget officers shall before entering upon their duties make a good and sufficient bond payable to the State of North Carolina in such form and amount as may be specified by the Governor and approved by the State Treasurer. (1947, c. 226.)

§ **134-100. Who may be committed.**—The schools, institutions and agencies enumerated, and others that now exist or may be hereafter established, shall accept and train all delinquent children of all races and creeds under the age of eighteen as may be sent by the judges of the juvenile courts or by judges of other courts having jurisdiction, provided such persons are not mentally or physically incapable of being substantially benefited by the program of the institution, school or agency. (1947, c. 226.)

§ **134-101. Removal request by Board.**—If any boy or girl under the care of a State school, institution or agency shall offer violence to a member of the staff or another boy or girl or do or attempt to do injury to the buildings, equipment, or property of the school, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over other boys and girls, the Board of Correction and Training may request the court committing said boy or girl or any court of proper jurisdiction to relieve the school of the custody of the boy or girl. (1947, c. 226.)

§ **134-102. Transfer by order of governor.**—The Governor of the State may by order transfer any person under the age of eighteen years from any jail or prison in this State to one of the institutions, schools or agencies of correction. (1947, c. 226.)

§ **134-103. Institution to be in position to care for offender before commitment.**—Before committing any person to the school, institution or agency, the court shall ascertain whether the school, institution or agency is in a position to care for such person and no person shall be sent to the school, institution or agency until the committing agency has received notice from the superintendent that such person can be received. It shall be at all times within the discretion of the State Board of Correction and Training as to whether the Board will receive any qualified person into the school, institution or agency. No commitment shall be made for any definite term but any person so committed may be released or discharged at any time after commitment, as hereinafter provided in this article. (1947, c. 226.)

§ **134-104. Delivery to institution.**—It shall be the duty of the county or city authorities from which the person is sent to the school, institution or agency by any court to see that such person is safely and duly delivered to the school, institution or agency to which committed and to pay all expenses incident to his or her conveyance and delivery to the said school, institution or agency. If the offender be a girl, she must be accompanied by a woman approved by the county superintendent of public welfare. (1947, c. 226.)

§ **134-105. Return of boys and girls improperly committed.**—Whenever it shall appear to the satisfaction of the superintendent of a State school, institution or agency and the State Board of Correction and Training that any boy or girl committed to such school, institution or agency is not of a proper age to be so committed, or is not properly committed, or is mentally or physically incapable of being materially benefited by the services of such school, institution or agency, the superintendent, with the approval of the State Board of Correction and Training, may return such boy or girl to the committing court to be dealt with in all respects as though he or she had not been so committed. (1947, c. 226.)

§ **134-106. Work to be conducted.**—There shall be established and conducted on such lands as may be owned in connection with the schools, institutions or agencies such trades, crafts, arts, and sciences suitable to the students and such teachings shall be done with the idea of preparing the students for making a living for themselves after release. Schools shall be maintained of public school standards and operated by teachers holding standard certificates as accepted in State's system of public schools. A recreation program shall be maintained for the health and happiness of all students. The precepts of religion, ethics, morals, citizenship and industry shall be taught to all students. (1947, c. 226.)

§ **134-107. Conditional release; superintendent may grant conditional release; revocation of release.**—The Board of Correction and Training shall have power to grant conditional release to any person in any school, institution or agency under its jurisdiction and may delegate this power to the superintendents of the various schools, institutions and agencies, under rules and regulations adopted by the Board of Correction and Training; such conditional release may be terminated at any time by written revocation by the superintendent, under rules and regulations adopted by the Board of Correction and Training, which written revocation shall be sufficient authority for any officer of the school, institution or agency, or any peace officer to apprehend any person named in such written revocation in any county of the State and to return such person to the institution. (1947, c. 226.)

§ **134-108. Final discharge.**—Final discharge may be granted by the superintendent under rules adopted by the State Board of Correction and Training at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his twenty-first birthday. (1947, c. 226.)

§ **134-109. Return of runaways.** — If a boy or girl runs away from a State school, institution or agency, the superintendent may cause him or her to be apprehended and returned to such school, institution or agency. Any employee of the school, institution or agency, or any person designated by the superintendent, or any official of the welfare department, or any peace officer may apprehend and return to the school, institution or agency, without a warrant, a runaway boy or girl in any county of the State, and shall forthwith carry such runaway to the school, institution or agency. (1947, c. 226.)

§ **134-110. Aiding escapees; misdemeanor.**—It shall be unlawful for any person to aid, harbor, conceal, or assist in any way any boy or girl who is attempting to escape or who has escaped from any school, institution or agency of correction and any person rendering such assistance shall be guilty of a misdemeanor. (1947, c. 226.)

§ **134-111. State Board of Health to supervise sanitary and health conditions.**—The State Board of Health shall have general supervision over the sanitary and health conditions of the several schools, institutions and agencies and shall make periodic examinations of the same and report to the State Board of Correction and Training the conditions found with respect to the sanitary and hygienic care of the students. (1947, c. 226.)

§ **134-112. Care of persons under federal jurisdiction.** — The State Board of Correction and Training is hereby empowered to make and enter into contractual relations with the proper official of the United States for admission to the State schools, institutions and agencies of such federal juvenile delinquents committed to the custody of such Attorney General as provided in the Federal Juvenile Delinquency Act as would profit from the program and services of the schools, institutions or agencies. (1947, c. 226.)

§ **134-113. Term of contract.**—Any contract made under the authority and provision of this article shall be for a period of not more than two years and shall be renewable from time to time for a period of not to exceed two years. (1947, c. 226.)

§ **134-114. Approval by State Budget Bureau.**—Any contract entered into under the provisions of this article with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or necessary federal agency by any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract, before the execution of said contract, shall have the approval of the State Budget Bureau. (1947, c. 226.)

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

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ARTICLE 1.

Retirement System for Teachers and State Employees.

§ **135-1. Definitions.**—The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in § 135-2.

(2) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.

(3) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of department of public instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State. In all cases of doubt, the board of trustees, hereinafter defined, shall determine whether any person is a teacher as defined in this chapter.

(4) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed:

Provided, that the term "employee" shall not include any justice of the Supreme Court or any judge of the superior court.

(5) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

(6) "Member" shall mean any teacher or State employee included in the memberhip of the System as provided in §§ 135-3 and 135-4: Provided, that no member shall be entitled to participate under the provisions of this chapter as to that part of the compensation in excess of five thousand dollars ($5,000.00) received by such members during any year and this shall apply to all creditable service.

(7) "Board of trustees" shall mean the board provided for in § 135-6 to administer the Retirement System.

(8) "Medical board" shall mean the board of physicians provided for in § 135-6.

(9) "Service" shall mean service as a teacher or State employee as described in subsections three or four of this section.

(10) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under § 135-4; provided, persons now employed by the State Highway and Public Works Commission shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to one thousand nine hundred and thirty-one.

(11) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.

(12) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 135-4.

(13) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

(14) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with § 135-7, subsection two.

(15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8.

(16) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

(17) "Average final compensation" shall mean the average annual earnable compensation of a teacher or employee during his last five years of service, or if he had less than ten years of service, then his average earnable compensation for his total service.

(18) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(19) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.

(20) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(21) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(22) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon

the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(23) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(24) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6.)

Editor's Note. — For comment on this enactment, see 19 N. C. Law Rev. 508.

The 1943 amendment struck out the phrase "where such employment has been continuous" which formerly appeared at the end of subsection (10).

The 1945 amendment rewrote subsection (6). The 1947 amendment deleted the words "and subsequent to one thousand nine hundred and twenty-one" formerly appearing at the end of subsection (10).

Session Laws 1951, c. 562, ss. 1, 2 added "Social Security" to the title of this chapter and inserted the heading of article 1. Section 3 of the act added all of article 2.

Retirement Law Is Valid.—It is the verdict of the General Assembly, embodied and expressed in this and the following sections, that the Retirement Plan has a definite relation to the just and efficient administration of the public school system which brings it within the scope of constitutional authority. Under the mandatory provisions of the Retirement Law, the public policy thus expressed is applied to the entire public school system and its administration at the hands of every administrative unit within it. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The Retirement Law is sufficiently invested with a public purpose and is a constitutional and valid expression of the legislative will, both generally and in its application to the local administrative units with which it deals. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The purpose of this and the following sections is to provide benefits on retirement for the teachers in the public school system of the State and for State employees. It is based not only upon the principle of justice to poorly paid State employees, but also upon the philosophy that a measure of freedom from apprehension of old age and disability will add to the immediate efficiency of those engaged in carrying on a work of first importance to society and the State. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

§ **135-2. Name and date of establishment.** — A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for teachers and state employees of the State of North Carolina. The retirement system so created shall be established as of the first day of July, one thousand nine hundred and forty-one.

It shall have the power and privileges of a corporation and shall be known as the "Teachers' and State Employees' Retirement System of North Carolina," and by such name all of its business shall be transacted, all of it funds invested, and all of its cash and securities and other property held. (1941, c. 25, s. 2.)

§ **135-3. Membership.**—The membership of this Retirement System shall be composed as follows:

(1) All persons who shall become teachers or state employees after the date as of which the Retirement System is established. On and after July 1st, 1947, membership in the Retirement System shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter.

(2) All persons who are teachers or State employees on February 17, 1941, or who may become teachers or State employees on or before July first, one thousand nine hundred and forty-one, except those who shall notify the board of trustees, in writing, on or before January first, one thousand nine hundred and forty-two, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

(4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January first, one thousand nine hundred and forty-two, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of twelve months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this chapter, or within said period of twelve months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this chapter. If such member so elects, he or she may pay to the board of trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

(5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946.

(6) No person who becomes a "teacher or employee," as the terms are defined in this chapter, shall be or become a member of the Retirement System who is elected, appointed or employed after he has attained the age of sixty years.

(7) (a) Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said system shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be filed within a period of 12 months from and after the 60th birthday of such applicant. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (2), paragraphs (a), (b) and (c). In the event that such member attains his 61st birthday and has not filed such application, his membership shall cease and he shall be entitled to the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of the accumulated regular interest thereon.

(b) In lieu of the benefits provided in paragraph (a) of this subsection (7), any member who separates from service on or after July 1, 1951 and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

(c) In lieu of the benefits provided in paragraph (a) of this subsection (7), any member who separated from service before July 1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (4), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, subsequent to July 1, 1951 and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

(d) Should a teacher or employee who retired on an early retirement allowance be restored to service prior to the attainment of the age of 60 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 135, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in § 135-15; provided that, should such restoration occur on or after the attainment of the age of 55 years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; 1947, c. 457, ss. 1, 2; 1947, c. 458, s. 5; 1947, c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561.)

Editor's Note. — The 1945 amendment added subsection (4).

The first 1947 amendment added subsection (5); the second amendment added subsection (6) and the second sentence of subsection (1); the third amendment added subsection (7); and the fourth amendment substituted "twelve months" for "six months" in the second sentence of subsection (4).

The 1949 amendment added at the end of subsection (5) the words "unless he elected to become a member prior to July 1, 1946."

The 1951 amendment rewrote subsection (7).

§ **135-3.1. Membership of highway patrolmen.**—Every person who is employed in the future as a State highway patrolman shall automatically become a member of the Teachers' and State Employees' Retirement System unless such person shall, within fifteen days after his employment, furnish the executive secretary of the board of trustees, Teachers' and State Employees' Retirement System, sufficient evidence that such person has become a member of the Law Enforcement Officers' Benefit and Retirement Fund, in which event such person shall not be entitled to membership in the Teachers' and State Employees' Retirement System. (1943, c. 120, s. 6; 1947, c. 692.)

Editor's Note. — Session Laws 1947, c. 692, s. 1, allowed State highway patrolmen until August 1, 1947, in which to withdraw their membership in the Teachers' and State Employees' Retirement System and become members of the Law Enforcement Officers' Benefit and Retirement Fund. Session Laws 1951, c. 567, changed the date mentioned to August 1, 1951.

§ **135-3.2. Membership of Co-operative Agricultural Extension Service employees.**—Under such rules and regulations as the board of trustees may establish and promulgate, Co-operative Agricultural Extension Service employees may, in the discretion of the governing authority of a county, become a member of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. (1949, c. 1056, s. 7.)

§ **135-4. Creditable service.**—(1) Under such rules and regulations as the board of trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946 shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the board of trustees may use for the purpose of this chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received.

(4) Upon verification of the statements of service, the board of trustees shall issue prior service certificates certifying to each member the period of service prior to the establishment of the Retirement System, with which the member is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the teacher or State employee again become a member, such teacher or State employee shall enter the System as a teacher or State employee not entitled to prior service credit except as provided in § 135-5, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate.

(6) Teachers and other State employees who entered the armed services of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who returned to the service of the State within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. Teachers and other State employees who entered the armed services of the United States on or after February 17th, 1941 and who returned to the service of the State prior to July 1st, 1950 after they have been honorably discharged from such armed services shall be entitled to full credit for all prior service, and, in addition, they shall receive membership service credit for the period of service in such armed services occurring after the date of establishment. Under such rules as the board of trustees shall adopt, the employer to which each such teacher or other State

employee returned shall make contributions with respect to such member in the amounts that he would have paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by paragraph (e) of subsection (1) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments.

(7) Teachers and other State employees who served in the armed forces of the United States and who, after being honorably discharged, returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the armed forces of the United States; and the salaries or compensations paid to such employees immediately before entering the armed forces shall be deemed to be the actual compensation rates of such teachers and State employees during said period of service. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4.)

Editor's Note. — The first 1943 amendment substituted "five years" for "year" in subsection (1). The second 1943 amendment added subsection (6). The 1945 amendment inserted in line two of subsection (6) the words "on or." The 1947 amendment added subsection (7). The 1949 amendment rewrote subsection (1) and added the last four sentences of subsection (6).

§ **135-5. Benefits.**—(1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five years shall be retired at the end of the year unless the employer requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the year.

(c) Any member in the service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years: Provided, that with the approval of his employer and the board of trustees, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Service Retirement Allowances.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at the age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and, if the member contributed during the period from July 1st, 1941, to June 30th, 1947, an additional supplementary pension which shall be equal to one-fourth of the annuity allowable at age of sixty years, computed on the basis of contributions made during such period but prior to the attainment of age sixty, plus one-fourth of the annuity allowable at his retirement age computed on the basis of contributions made during such period; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of five per centum of his compensation, plus the pension, which would have been provided at age sixty on account of such contributions.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Re-Examination of Beneficiaries Retired for Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this chapter, he shall be paid such part as he shall demand of the sum of the contributions standing to the credit of his individual account in the annuity savings fund, together with such interest thereon as the board shall allow, but not less than one-half of accumulated regular interest thereon. Upon receipt of proof satisfactory to the board of trustees of the death of a member in service there shall be paid to his legal representatives or to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, the amount of his accumulated contributions at the time of his death.

(7) Election of Optional Allowance.—With the provision that no optional selection shall be effective in case the beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provisions that:

Option 1. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement.

(8) Computation of Benefits Payable Prior or Subsequent to July 1, 1947.—Prior to July 1st, 1947, all benefits payable as of the effective date of this act shall be computed on the basis of the provisions of chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1st, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the board of trustees may adopt, the provisions of this act as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserve between the funds of the retirement system as may be required by the provisions of this subsection.

(9) Restoration to Service of Certain Former Members.—If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased

shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5.)

Editor's Note. — The 1945 amendment made changes in subsection (6). The 1947 amendment rewrote paragraphs (b) and (c) of subsection (2). It also rewrote subsection (6) and added subsection (8). The 1949 amendment added the second sentence of subsection (6) and all of subsection (9).

The retirement payment provided by this section constitutes delayed compensation in consideration of services rendered. It is compensation for public services. Its purpose is to induce experienced and competent teachers to remain in service and thus promote the efficiency and effectiveness of the educational program. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

§ **135-6. Administration.**—(1) Administration by Board of Trustees; Corporate Name; Rights and Powers; Tax Exemption.—The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the chapter are hereby vested in a board of trustees which shall be organized immediately after a majority of the trustees provided for in this section shall have qualified and taken the oath of office.

The board of trustees shall be a body politic and corporate under the name "Board of Trustees Teachers' and State Employees' Retirement System;" and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(2) Membership of Board; Terms.—The board shall consist of eight members, as follows:

(a) The State Treasurer, ex officio;

(b) The Superintendent of Public Instruction, ex officio;

(c) Six members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the State Highway and Public Works Commission, who shall be appointed by the Governor for a term of four years commencing April 1st, 1947 and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(3) Compensation of Trustees.—The trustees shall be paid seven dollars ($7.00) per day during sessions of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(4) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(5) Voting Rights.—Each trustee shall be entitled to one vote in the board. Four affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(6) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this chapter.

(7) Officers and Other Employees; Salaries and Expenses.—The State Treasurer shall be ex officio chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the Director of the Budget.

(8) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(9) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

(10) Legal Adviser.—The Attorney General shall be the legal adviser of the board of trustees.

(11) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(12) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(13) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection fourteen, paragraphs (a) and (b) of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(14) In the year one thousand nine hundred and forty-three, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets

and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the board of trustees shall:

(a) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and

(b) Certify the rates of contributions payable by the State of North Carolina on account of new entrants at various ages.

(15) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1941, c. 25, s. 6; 1943, c. 719; 1947, c. 259.)

Editor's Note. — The 1943 amendment added the second sentence of subsection (6).

The 1947 amendment made changes in subsection (2). It increased the membership of the board from seven to eight and the appointive members from five to six. It also inserted the provision requiring one of the appointive members to be an employee of the State Highway and Public Works Commission.

§ 135-7. Management of funds. — (1) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in § 135-8, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon the investment of State sinking funds, and subject to like terms, conditions, limitations and restrictions, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(2) Regular Interest Allowance.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the System for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three per centum and a maximum of four per centum, with the latter rate applicable during the first year of operation of the Retirement System.

(3) Custodian of Funds; Disbursements; Bond of Secretary.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Deposits to Meet Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer of North Carolina.

(5) Personal Profit or Acting as Surety Prohibited.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for his service. No trustee

or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1941, c. 25, s. 7.)

§ **135-7.1. Purchase of notes obtained from loans made from State Literary Fund.**—The State Board of Education is hereby authorized, in its discretion, to sell notes, obtained from loans made from the State Literary Fund, to the board of trustees of the Teachers' and State Employees' Retirement System of North Carolina. The board of trustees of the Teachers' and State Employees' Retirement System of North Carolina is hereby authorized, in it discretion, to purchase from the State Board of Education notes obtained by said board from loans made from the State Literary Fund. (1943, c. 603.)

§ **135-8. Method of financing.**—All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(a) Prior to the first day of July, 1947, each employee shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum of his earnable compensation; and the employer also shall deduct four per centum of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if a teacher or State employee was not a member on the first day of the payroll period.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the salaries that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (c) of this section in excess of the amount to be paid to the Retirement System on the basis of the State salary schedule and term. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

(d) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom as provided in this chapter. Such amounts so deposited shall become a part of his accumulated contributions in the same manner as if said contributions had not been withdrawn.

(e) Subject to the approval of the board of trustees, any member, who is on leave of absence on account of military service or for any other purpose which might tend to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.

(f) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) On account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the earnable compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one-hundredths per centum (1.59%) of the salary of other State employees.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined.

(d) The total amount payable in each year to the pension accumulation fund shall be not less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the year then current.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.

(f) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.

(g) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collections of employers' contributions shall be made as follows:

(a) Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to the budget bureau a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation and expense funds, as provided under subsections (3) and (5) of this section, and these funds shall be handled and disbursed in accordance with chapter one hundred, Public Laws of one thousand nine hundred and twenty-nine, and amendments thereto [§ 143-1 et seq.], known as The Executive Budget Act.

(b) Until the first valuation has been made and the rates computed as provided in subsection (3) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths per centum (5.51%) of the payroll of all teachers and three and sixteen one-hundredths per centum (3.16%) for other State employees.

(c) The auditor shall issue his warrant to the State Treasurer directing the State Treasurer to pay this sum to the board of trustees, from the appropriations for the Teachers' and State Employees' Retirement System.

(d) Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the board of trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

(e) Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month. (1941, c. 25, s. 8; 1941, c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8.)

Editor's Note.—The 1943 amendment inserted in the second sentence of paragraph (c) of subsection (1) the words "and shall transmit the same to the State Retirement System monthly." It also inserted paragraph (e) of said subsection and added paragraph (e) of subsection (5).

The 1947 amendment rewrote paragraph (a) of subsection (1) and added paragraph (f) thereto. It also added the third sentence to paragraph (c) of subsection (3).

Local Unit Contribution. — Where a local unit assumes the burden of supplementing State support for the schools, the provision of subsection (1) (c) of this section that the local unit make its contribution and the taxing authority provide the necessary funds is mandatory. Bridges v.

Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942), holding no vote necessary to tax to meet deficiency in previously authorized tax.

§ **135-9. Exemption from taxes, garnishment, attachment, etc.**—The right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created by this chapter, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided. (1941, c. 25, s. 9.)

Editor's Note. — For comment on this enactment, see 19 N. C. Law Rev. 519.

§ **135-10. Protection against fraud.**—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the county jail not exceeding twelve months, or both such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1941, c. 25, s. 10.)

§ **135-11. Application of other pension laws.**—No other provision of law in any other statute which provides wholly or partly at the expense of the State of North Carolina for pensions or retirement benefits for teachers or State employees of the said State, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this chapter, their widows or other dependents. (1941, c. 25, s. 11.)

§ **135-12. Obligation of maintaining reserves and paying benefits.**—The maintenance of annuity reserves and pension reserves as provided for and regular interest creditable to the various funds as provided in § 135-8, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this chapter, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said fund. (1941, c. 25, s. 12.)

§ **135-13. Certain laws not repealed; suspension of payments and compulsory retirement.**—Nothing in this chapter shall be construed to repeal or invalidate any of the provisions of chapter four hundred and eighty-three of the Public-Local Laws of one thousand nine hundred and nineteen, or chapter three hundred and eighty-five of the Public-Local Laws of one thousand nine hundred and twenty-one, as amended, relating to pensions for school teachers in New Hanover County. No payment on account of any benefit granted under the provisions of § 135-5, subsections (1)-(4) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during such period. (1941, c. 25, s. 13.)

§ **135-14. Pensions of certain public school classroom teachers.**—Any person who has been a classroom teacher in the public schools of North

Carolina for a total of twenty or more years, and who was not teaching in the public schools of this State at the time of the enactment of the Teachers' Retirement System Act, the same being this chapter, and whose cessation of employment as a teacher was not due to any dishonorable cause, shall be entitled to receive benefits under said Retirement Act for such services in the same manner and to the same extent as such twenty years of prior service would have entitled such teacher had he or she been teaching in the public schools at the time said Retirement Act became effective, and had chosen to become a member of the Retirement System, provided that (1) such former teacher was sixty-five years old or more on the 10th day of March, 1943, or is now by reason of physical disability unable to teach; and (2) such former teacher, in the opinion of the board of trustees of the Teachers' and State Employees' Retirement System of North Carolina, is without adequate means of support, either by reason of lack of gainful employment, lack of income from property or inadequate support by husband or wife.

There is hereby appropriated from the general fund of the State such sum or sums as may be necessary to carry out the provisions of this section.

This section shall be administered by the board of trustees of Teachers' and State Employees' Retirement System of North Carolina created under the provisions of section 135-2 and the provisions of this chapter shall be controlling in the administration of this section in all respects or provisions except as they may be modified by this section for the purposes of this section. (1943, c. 785.)

§ 135-15: Repealed by Session Laws 1949, c. 1056, s. 9.

§ 135-16. Employees transferred to North Carolina State Employment Service by Act of Congress.—Notwithstanding any provision contained in this chapter, any employee of the United States Employment Service who was transferred to and became employed by the State of North Carolina, or any of its agencies, on November 16th, 1946, by virtue of Public Laws 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower Commission or the United States Employment Service between January 1st, 1942, and November 15th, 1946, shall be deemed to have been engaged in membership service as defined by this chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1st, 1948, pays to the board of trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would have made during such period if he had been a member of the Retirement System with earnable compensation based on the salary received for such period and as limited by this chapter: Provided, further that funds are made available by the United States Employment Service, or other federal agency, to the Employment Security Commission for the payment of and the Employment Security Commission pays to the board of trustees for the benefit of the proper fund a sum equal to the employer's contributions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The board of trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section. (1947, c. 464, s. 1; 1947, c. 598, s. 1.)

Editor's Note. — By virtue of Session Laws 1947, c. 598, s. 1, "Employment Security Commission" was substituted for "Unemployment Compensation Commission."

§ 135-17. Facility of payment.—In the event of the death of a member or beneficiary not survived by a person designated to receive any return of accumulated contributions or balance thereof, or in the event that the board of trustees shall find that a beneficiary is unable to care for his affairs because of illness or accident, any benefit payments due may, unless claim shall have been made therefor by a duly appointed guardian, committee or other legal representative, be paid to the spouse, a child, a parent or other blood relative, or to any person deemed by the board of trustees to have incurred expense for such beneficiary or deceased member, and any such payments so made shall be a complete discharge of the liabilities of this Retirement System therefor. (1949, c. 1056, s. 6.)

§ **135-18. Re-employment of retired teachers and employees.**—The board of trustees of the Teachers' and State Employees' Retirement System may establish and promulgate rules and regulations governing the re-employment of retired teachers and employees. (1949, c. 1056, s. 8.)

§ **135-18.1. Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.**—(1) Any person who is a member of the Teachers' and State Employees' Retirement System of North Carolina on July 1, 1951, and who was previously a member of the North Carolina Governmental Employees' Retirement System, hereafter in this section referred to as the local system, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system, notwithstanding that his membership in the local system may have been terminated prior to July 1, 1951: Provided, such member shall deposit in this Retirement System prior to January 1, 1952, the full amount of any accumulated contributions standing to his credit in, or previously withdrawn from, the local system and shall apply to the board of trustees of this Retirement System for a transfer of credit from the local system. Any person who becomes a member of this Retirement System after July 1, 1951, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system: Provided, such person, prior to or at the date of his withdrawal from the local system shall notify the board of trustees of the local system of his intention to enter this Retirement System, and shall request a refund of the total amount of the accumulated contributions standing to his credit in the annuity savings fund of the local system, and shall deposit such contributions so refunded from the local system in this Retirement System within six months from the date of such refund, with request to the board of trustees of this System for transfer of his credits from the local system.

(2) The accumulated contributions withdrawn from the local system and deposited in this Retirement System shall be credited to such member's account in the annuity savings fund of this Retirement System and shall be deemed, for the purpose of computing any benefits subsequently payable from the annuity savings fund, to be regular contributions made on the date of such deposit.

(3) Upon the deposit in this Retirement System of the accumulated contributions previously withdrawn from the local system the board of trustees of this Retirement System shall request the board of trustees of the local system to certify to the period of membership service credit and the regular accumulated contributions attributable thereto and to the period of prior service credit, if any, and the contributions with interest allowable as a basis for prior service benefits in the local system, as of the date of termination of membership in the local system. Credit shall be allowed in this System for the service so certified in determining the member's credited service and, upon his retirement he shall be entitled, in addition to the regular benefits allowable on account of his participation in this Retirement System, to the pension which shall be the actuarial equivalent at age 60 or at retirement, if prior thereto, of the amount of the credit with interest thereon representing contributions attributable to his service credits in the local system.

(4) Anything to the contrary herein notwithstanding, if a member transferring his credits to this Retirement System as herein provided retires on a retirement

allowance in this Retirement System within five years after the date of such deposit, the benefits payable with respect to the service credits so transferred from the local system to this Retirement System shall not be greater than those which would have been payable with respect to such service had he remained in the local system.

(5) The board of trustees of the Retirement System shall effect such rules as it may deem necessary to prevent any duplication of service, interest or other credits which might otherwise occur. (1951, c. 797.)

ARTICLE 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

§ **135-19. Declaration of policy.**—In order to extend to employees of the State and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitation of this article, that such steps be taken as to provide such protection to employees of the State and local governments on as broad a basis as is permitted under applicable federal law. (1951, c. 562, s. 3.)

§ **135-20. Definitions.**—For the purposes of this article:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

(b) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the State and the Federal Security Administrator entered into under this article.

(c) The term "employee" includes an officer of the State, or one of its political subdivisions or instrumentalities.

(d) The term "State agency" means the secretary of the board of trustees of the Teachers' and State Employees' Retirement System.

(e) The term "Federal Security Administrator" includes any individual to whom the Federal Security Administrator has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions.

(f) The term "political subdivision" includes an instrumentality of a state, of one or more of its political subdivisions, or of a state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.

(g) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended.

(h) The term "Federal Insurance Contributions Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code as such Code has been and may from time to time be amended. (1951, c. 562, s. 3.)

§ 135-21. Federal-State agreement; interstate instrumentalities.—(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Federal Security Administrator, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in § 135-20. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State agency and Federal Security Administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that—

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

(2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in § 135-20), equal to the sum of the taxes which would be imposed by §§ 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into.

(4) All services which constitute employment as defined in § 135-20 and are performed in the employ of the State by employees of the State, shall be covered by the agreement.

(5) All services which (A) constitute employment as defined in § 135-20, (B) are performed in the employ of a political subdivision of the State, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under § 135-23, shall be covered by the agreement.

(b) Any instrumentality jointly created by this State and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the Federal Security Administrator whereby the benefits of the federal old age and survivors insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under § 135-22 (a) if they were covered by an agreement made pursuant to subsection (a) of this section, and (3) to make payments to the Secretary of the Treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (a) and other provisions of this article. (1951, c. 562, s. 3.)

§ 135-22. Contributions by State employees.—(a) Every employee of the State whose services are covered by an agreement entered into under § 135-21 shall be required to pay for the period of such coverage, into the contribution fund established by § 135-24, contributions, with respect to wages (as defined in § 135-20), equal to the amount of tax which would be imposed by § 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this article.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agency shall prescribe. (1951, c. 562, s. 3.)

§ **135-23. Plans for coverage of employees of political subdivisions.**—(a) Each political subdivision of the State is hereby authorized to submit for approval by the State agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agency, except that no such plan shall be approved unless—

(1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under § 135-21.

(2) It provides that all services which constitute employment as defined in § 135-20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.

(4) It provides for such methods of administration of the plan by the political subdivision as are found by the State agency to be necessary for the proper and efficient administration of the plan.

(5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agency may from time to time require, and comply with such provisions as the State agency or the Federal Security Administrator may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the State agency to terminate the plan in its entirety, in the discretion of the State agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State agency and may be consistent with the provisions of the Social Security Act.

(b) The State agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in § 135-20), at such time or times as the State agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State agency under § 135-21.

(2) Each political subdivision required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in § 135-20), not exceeding

the amount of tax which would be imposed by § 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in the Superior Court of Wake County against the political subdivision liable therefor or may, at the request of the State agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State. (1951, c. 562, s. 3.)

§ **135-24. Contribution fund.**—(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) All contributions, interest, and penalties collected under §§ 135-22 and 135-23; (2) all moneys appropriated thereto under this article; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the State agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this article. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under § 135-21; (B) payment of refunds provided for in § 135-22 (c); and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the State agency in accordance with any agreement entered into under § 135-21 and the Social Security Act.

(d) The treasurer of the State shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this article and the directions of the State agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated biennially to the contribution fund, in addition to the contributions collected and paid into the contribution fund under §§ 135-22 and 135-23, to be available for the purposes of § 135-24 (b) and (c) until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under § 135-21.

(2) The State agency shall submit to each regular session of the State legislature, at least ninety (90) days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the contribution fund by paragraph (1) of this subsection for the next appropriation period.

(f) The State agency shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this article. Such charge or assessment shall be determined by the State agency and shall be apportioned among the various political subdivisions of government in a ratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this article. In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this article, or in case such charge or assessment remains unpaid for a period of thirty (30) days, the State agency may maintain a suit in the Superior Court of Wake County for the recovery of such charge or assessment. The Superior Court of Wake County is hereby vested with jurisdiction over all such suits or actions. Only such amount shall be assessed against such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this article by the State agency. The funds accumulated and derived from such assessments and charges shall be deposited by the State agency in some safe and reliable depository chosen by the State agency, and the State agency shall issue such checks or vouchers as may be necessary to defray the above-mentioned expenses of administration with the right of the representative of any political subdivision to inspect the books and records and inquire into the amounts necessary for such administration. (1951, c. 562, s. 3.)

§ **135-25. Rules and regulations.**—The State agency shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article. (1951, c. 562, s. 3.)

§ **135-26. Studies and reports.** — The State agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this article and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this article during the preceding biennium, including such recommendations for amendments to this article as it considers proper. (1951, c. 562, s. 3.)

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ARTICLE 1.

Organization of State Highway and Public Works Commission.

§ 136-1. State Highway and Public Works Commission created.—A highway and public works commission is hereby created to be and continue an agency of the State government and to be known as the "State Highway and Public Works Commission." The said Commission shall consist of a chairman and ten commissioners; the chairman and each of said commissioners shall be appointed by the Governor for a term of four years, the said terms to commence May first, one thousand nine hundred and forty-one, and continue until their successors are appointed and qualify: Provided, that the chairman or any commissioner appointed pursuant to this section may be removed by the Governor for cause. In case of the death, resignation, or removal from office of said chairman or any commissioner prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term. At the expiration of the term for which said chairman and commissioners are appointed, their successors shall be appointed for the term of four years each. The chairman shall devote his entire time and attention to the work of the Commission, and shall receive as his compensation such sum as may be fixed in the discretion of the Governor and Advisory Budget Commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties. The said chairman shall be vested with all authority of the Commission when the Commission is not in session, and shall be the executive officer of the said Commission and shall execute all orders, rules, and regulations established by said Commission. The commissioners, except the chairman, shall each receive ten dollars ($10.00) per day while engaged in the discharge of the duties of their office and their actual traveling expenses. The commissioners shall be so selected that it will be physically possible to divide the State into ten divisions of substantially equal size on the joint bases of area, population and mileage; and said commissioners shall, on or before the first day of July, one thousand nine hundred and thirty-seven, designate the boundary lines of said divisions in such manner that each of said commissioners will be a resident of a separate division: Provided, however, that said division lines may be changed from time to time by a two-thirds vote of the Commission and with the consent and approval of the board of county commissioners of the county or counties immediately affected thereby. Notwithstanding the provisions contained herein for the selection of commissioners in such manner as to make it physically possible to divide the State into ten divisions, it is the intent and purpose of this section that all of said Commission and the chairman shall represent the State at large and not be representative of any particular division. It shall be the duty of the Commission as a whole to select the road projects to be constructed or reconstructed which now or shall constitute a part of the primary highway system of the State. The intent and purpose of this section is that there shall be maintained and developed a State-wide highway system commensurate with the needs of the State as a whole and not to sacrifice the general State-wide interest to the purely local desires of any division.

It shall be the duty of each commissioner to inform himself of the road needs of the particular division from which said commissioner is chosen and to report his findings from time to time to the Commission. The Commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, repair and maintenance of the highway system of the State, with due regard to farm-to-market roads and school bus routes.

Each member of the Commission shall designate some time and place during each calendar month where he will be for the purpose of hearing such matters and things as may be presented to him by the governing bodies of the several counties of his district; and shall advise the chairman of said governing bodies accordingly. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1; 1945, s. 895.)

Editor's Note.—Public Laws 1915, c. 113, s. 1, established a State Highway Commission. This section superseded that law by the establishment of a State Highway and Public Works Commission. The function of the State Highway Commission was declared to be "to assist the counties in developing a State and county system of highways." Prior to the act of 1921 (§ 136-45 et seq.), creating a State highway system, the primary control was in the counties and political subdivisions, and the State Highway Commission served in an advisory capacity. By that act the State Highway Commission, now the State Highway and Public Works Commission, had primary control.

The 1941 amendment changed the term of office from six to four years, inserted the second paragraph and made other changes.

The 1945 amendment rewrote the fifth sentence relating to the compensation of the chairman of the Commission.

For acts relating to parking meters in certain localities and exempting them from this chapter, see Session Laws 1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 275 (city of Statesville); c. 735 (town of Mooresville); c. 1035 (county of Cabarrus).

Action May Be Maintained in Corporate Name. — The State Highway and Public Works Commission, as successor to the State prison department, has implied power to maintain an action in its corporate name on behalf of the State. State Highway, etc., Comm. v. Cobb, 215 N. C. 556, 2 S. E. (2d) 565 (1939).

§ **136-2. Headquarters; meetings; minutes.** — The headquarters and main office of the said Commission shall be located in Raleigh, and the Commission shall meet in its main office at least once in each sixty days, or at such regular time as the Commission may by rule provide, and may hold special meetings at any time and place within the State at the call of the chairman or the Governor or any three members of the Commission.

The Governor and the State Treasurer shall be privileged to attend any and all meetings of said Commission in an advisory capacity, but they shall not have the authority to vote upon any question before said Commission. The Commission shall keep minutes of all its meetings, which shall at all times be open to public inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1.)

§ **136-3. When acting chairman may be designated.** — The Commission may, with the approval of the Governor designate a member of the Commission or some other suitable person as acting chairman and confer upon the said acting chairman all authority of the chairman, or such restricted authority as the Commission may by resolution determine to be exercised, in the event the chairman, on account of absence from the State, illness, or other cause, may be unable temporarily to discharge the duties of his office. (1935, c. 257, s. 1.)

§ **136-4. State Highway Engineer and other employees.**—The State Highway and Public Works Commission shall employ a State Highway Engineer, who shall be a competent civil engineer, qualified by technical training as well as practical construction experience in highway work. The Engineer shall hold office during the pleasure of the Commission, but not to exceed a period of four years without reappointment. He shall receive an annual salary to be fixed by the Commission, with the approval of the Governor and the Budget Bureau, payable in monthly installments, together with such actual and other necessary expenses as may be incurred in the official discharge of his duties. The Engineer, before entering upon the discharge of the duties of his office, shall take an oath that he will faithfully and honestly execute the duties of his office. Said Commission shall prescribe and fix the duties of the Engineer, and shall provide the Engineer with offices and sufficient equipment to discharge his duties as prescribed by the Commission and this chapter. The Commission shall employ such other engineers, clerks, and assistants as may be needed, and at such salaries and for such terms as appear necessary and prescribe and fix their duties. In the discretion of the Commission, such offices may be established in the construction districts as may be necessary to carry out the provisions of this chapter. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17.)

§ **136-5. Oath of office of commissioners.** — Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission shall take and subscribe to an oath of office before some person authorized to administer oaths that they will faithfully support the Constitution of the State of North Carolina and all laws enacted pursuant thereto and not inconsistent therewith, and that they will faithfully perform the duties of their respective offices. Said oaths shall be filed and preserved by the Commission as a part of its permanent records. (1921, c. 2, s. 6; C. S., s. 3846(h); 1933, c. 172, s. 10.)

§ **136-6. Bonds of commissioners and engineer.**—Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission and the State Highway Engineer shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of their respective offices and the full and proper accounting for all public funds and property coming into their possession or under their control. The premiums on said bonds shall be paid out of the State Highway Fund. (1921, c. 2, s. 6; C. S., s. 3846(h); 1933, c. 172, s. 17.)

§ **136-7. Employees of Commission governed by classification filed with Budget Bureau; exceptions.**—All employments by the State Highway and Public Works Commission and all changes in existing employment shall be in accordance with the classifications established in the report authorized by and adopted in conformance with chapter three hundred fifty-five of the Public Laws of 1941, as said report is approved by the Governor and Advisory Budget Commission. The Assistant Director of the Budget shall certify the salary or wages of the particular employee within the range of the minimum and maximum established in the said report for such employment. The hourly maintenance and construction employees now or hereafter exempted from the Personnel Act shall not be placed under the Personnel Act, even if they are placed on a monthly basis of salary payment to facilitate operation under the State Employees and Teachers' Retirement Act, but they shall be paid according to the said salary schedule or classification as established. (1941, c. 355.)

§ **136-8. Revision of salary schedules.** — The salary schedule provided for in § 136-7 may be amended from time to time by order of the Commission, subject to the approval of the Governor and the Advisory Budget Commission. (1929, c. 182, s. 1; 1933, c. 172, ss. 16, 17; 1943, c. 410.)

Editor's Note.—Prior to the 1943 amendment this section related to the maximum compensation that could be paid by the Commission.

§ **136-9. Employment of counsel.**—The State Highway and Public Works Commission may in its discretion, with the approval of the Governor, employ any attorney or attorneys to advise them for the purpose of condemning land acquired by this chapter, making any contracts, and to do other legal work that the Commission may believe necessary for carrying out this chapter, and compensation for all such services shall be paid out of the State Highway Fund. (1921, c. 2, s. 21; C. S., s. 3846(k); 1933, c. 172, s. 17; 1943, c. 410.)

Editor's Note. — The 1943 amendment inserted the phrase "with the approval of the Governor."

Cited in Rockingham County v. Norfolk, etc., R. Co., 197 N. C. 116, 147 S. E. 832 (1929).

§ **136-10. Annual audits; report of audit to General Assembly.**—The books and accounts of the Highway and Public Works Commission shall be audited at least once a year by a certified public accountant to be designated by the Auditor of the State, and the report of the certified accountant shall be made a part of the report of the Commission to the General Assembly as herein provided. (1921, c. 2, s. 24; C. S., s. 3846(m); 1933, c. 172, s. 17.)

§ **136-11. Annual reports to Governor.**—The State Highway and Public Works Commission shall make to the Budget Bureau, or to the Governor, a full report of its finances and the physical condition of the State's prison, prison camps, and other buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the Governor or Directors of the Budget may call for the same. (1933, c. 172, s. 11.)

§ **136-12. Reports to General Assembly.** — The Highway and Public Works Commission shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Commission, and such other data as may be of interest in connection with the work of the Commission. A full account of each road project shall be kept by and under the direction of the Commission or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request. (1921, c. 2, s. 23; C. S., s. 3846(l); 1933, c. 172, s. 17.)

§ 136-13. Malfeasance of commissioners, employees, or contractors.—It shall be unlawful for any member or employee of the Highway and Public Works Commission to knowingly or fraudulently perform any act with intent to injure the State; or for any contractor or agent or employee of a contractor to conspire with a member or employee of the Commission or with a State official to permit a violation of a contract with intent to injure the State; or for any contractor or agent or employee of any contractor to do any work on any State highway in violation of contract with intent to defraud the State. Any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the State prison not less than one year nor more than five years, and be liable to the State in a civil action instituted by the State on relation of the Highway and Public Works Commission, for double the amount the State may have lost by reason of the violation of this section. (1921, c. 2, s. 49; C. S., s. 3846(cc); 1933, c. 172, s. 17.)

§ 136-14. Members not eligible to other employment with Commission; no sales to Commission by employees.—No member of the Highway and Public Works Commission shall be eligible to any other employment in connection with said Commission, and no member of said Commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said Commission. (1933, c. 172, s. 10.)

§ 136-15. Establishment of administrative districts.—The State Highway and Public Works Commission may establish such administrative districts as in their opinion shall be necessary for the proper and efficient performance of the duties of the Commission. Such districts as may be established shall be without regard to the places of residence of the members of the Commission. The Commission may from time to time change the number of such districts, or they may change the territory embraced within the several districts, when in their opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17.)

§ 136-16. Funds and property converted to State Highway Fund.—Except as otherwise provided, all funds and property collected by the State Highway and Public Works Commission shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; C. S., s. 3595; 1933, c. 172, s. 17.)

Article 2.

Powers and Duties of Commission.

§ 136-17. Seal; rules and regulations.—The State Highway and Public Works Commission shall adopt a common seal and shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the Commission, and to make all necessary rules and regulations for carrying out the intent and purposes of this chapter. The Commission shall succeed to all the rights, powers and duties heretofore vested in the State Highway Commission and the State Prison Department, and it is hereby empowered to make all necessary rules and regulations for carrying out such duties. (1933, c. 172, s. 2.)

§ 136-18. Powers of Commission.—The said State Highway and Public Works Commission shall be vested with the following powers:

(a) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this chapter.

(b) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights of way for any new roads that may be necessary for a State highway system, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Commission may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system: Provided, all changes or alterations authorized by this subsection shall be subject to the provisions of §§ 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this chapter shall be construed to authorize or permit the Commission to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Commission.

(c) To provide for such road materials as may be necessary to carry on the work of the State Highway and Public Works Commission, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Commission any of such material, at a price to be fixed by said Commission, thereafter the Commission shall have the right to condemn the necessary right of way under the provisions of chapter forty, to connect said deposit with any part of the system of State highways or public carrier.

(d) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the State Highway and Public Works Commission with other public bodies, corporations, or persons.

(e) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Commission shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Commission may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(f) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the State Highway and Public Works Commission shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(g) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The State Highway and Public Works Commission shall have authority to maintain all streets constructed by the Commission in towns of less than three thousand population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Commission, whenever in the opinion of the Commission it is necessary and proper so to do.

(h) To give suitable names to State highways and change the names of any highways that shall become a part of the State system of highways.

(i) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to co-operate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of these objectives. No such roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes and every use or attempted use of any such area for commercial purposes shall constitute a misdemeanor and each day's use shall constitute a separate offense.

(j) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, and other similar obstructions that may, in the opinion of the Highway and Public Works Commission, contribute to the hazard upon any of the said highways or in anywise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Commission shall require the removal of, or changes in, the location of telephone, telegraph, or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of the said Commission. Any violation of such rules and regulations or non-compliance with such orders shall constitute a misdemeanor.

(k) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the State Highway and Public Works Commission, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Commission shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Commission shall have power to close to use and abandon such grade crossing and any other crossings adjacent thereto.

(l) The said State Highway and Public Works Commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said Commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction, improvement and maintenance of roads under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Agriculture or otherwise provided by federal acts, and to do all other things necessary to carry out fully the co-operation contemplated and provided for by present or future acts of Congress, for the construction or improvement and maintenance of rural post roads. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Commission and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000.00).

(m) The State Highway and Public Works Commission is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the city of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(n) The State Highway and Public Works Commission shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(o) The State Highway and Public Works Commission shall have authority to provide facilities for the use of water-borne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.

(p) The State Highway and Public Works Commission shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights of way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights of way or for the widening of existing rights of way or the clearing of obstructions that, in the opinion of the Commission, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Commission has agreed in writing to accept the property so acquired in exchange for that to be used by the Commission, and when, in the opinion of the Commission, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(q) The State Highway and Public Works Commission is hereby authorized and required to maintain and keep in repair roads sufficient to accommodate school busses leading from the State maintained public road to all schools and school buildings to which children are transported on school busses to and from their homes during the regular organized school year.

(r) To administer, through the Division of Prisons, the State Prison System.

(s) To co-operate with appropriate agencies of the United States in acquiring rights of way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(t) To prohibit the erection of any informational, regulatory, or warning signs within the right of way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the State Highway and Public Works Commission, unless such signs have first been approved by the State Highway and Public Works Commission. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; C. S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; 1933, c. 517, s. 1; 1935, c. 213, s. 1; 1935, c. 301; 1937, c. 297, s. 2; 1937, c. 407, s. 80; 1941, c. 47; 1941, c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372.)

Cross References. — See generally the chapters on Motor Vehicles and Utilities Commission. As to authorizing use of county prisoners on roads not within State systems, see § 153-198. As to power to determine the maximum load limit for bridges, see § 136-72.

Editor's Note. — The 1929 amendment added subsection (m), and the 1931 amendments added subsections (n) and (o), and the last sentence of subsection (l). The 1933 amendments changed "State Highway Commission," etc., to "State Highway and Public Works Commission," etc., and added a provision which was subsequently deleted. The first 1937 amendment added subsection (p). The first 1941 amendment added subsection (q). And the 1943 amendment added subsection (s). The 1945 amendment added subsection (t), and the 1951 amendment rewrote subsection (i).

Under Brown v. United States, 263 U. S. 78, 44 S. Ct. 92, 68 L. Ed. 171 (1923), and Dohany v. Rogers, 281 U. S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A. L. R. 434 (1930), it is likely that the taking of property for exchange purposes under the provisions of subsection (p) would be held to be for a public use. 15 N. C. Law Rev. 365.

Section Construed with § 136-47. — This section, giving the Commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with § 136-47, the latter limiting the discretion conferred in the former, among other things, in respect to routes between "county seats, principal towns, etc.," according to a map referred to therein, and as to those matters particularly mentioned in § 136-47, the discretion was taken away from the Commission by express statutory provision. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Broad Discretion in Changing Roads.—The statute, this section, subsec. (b), and § 136-45, give broad discretionary powers to the State Highway Commission in establishing, altering, and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886 (1923).

Construction of New Roads. — Subsection (b) of this section does not authorize the Commission to totally abandon an existing part of the highway system and construct an entirely new road in its place. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

But in view of this subsection the Commission may construct new roads notwithstanding statute authorizing the Commission "to take over for State maintenance additional roads heretofore maintained by the several counties." Board of Com'rs v. State Highway Comm., 195 N. C. 26, 141 S. E. 539 (1928).

Contract with County Commissioners.—In contemplation of the statute, the State Highway Commission is entrusted to construct and maintain a system of public highways and to contract in reference thereto, and a contract made between the Commission and the board of commissioners of a county wherein the latter is to advance certain moneys as a proportionate expense in the former's taking over and maintaining a particular highway to be repaid by the State Highway Commission from its funds is a valid and legal contract, supported by a sufficient consideration. Young v. Board, 190 N. C. 52, 128 S. E. 401 (1925).

Use of Highway by Telephone and Telegraph Companies. — The State Highway and Public Works Commission has been granted exclusive control over the State highway system and may in its discretion authorize the use of a highway right of way by telephone and telegraph companies, and prescribe the manner and extent of such use, subject to the right of the owner of the servient estate to payment of compensation for the additional burden. Hildebrand v. Southern Bell Tel., etc., Co., 221 N. C. 10, 18 S. E. (2d) 827 (1942). See also, Hildebrand v. Southern Bell Tel., etc., Co., 219 N. C. 402, 14 S. E. (2d) 252 (1941).

The effect of this section is to give dominance to the easement acquired by the State. Under the terms thereof the Highway Commission has authority to control the uses to which the land embraced within the easement may be put. If it deems it wise or expedient so to do in the interest of the traveling public, it may altogether exclude the imposition of any additional easement or burden. It may not be held that the legislature intended thereby to declare that the construction and maintenance of a telephone line is a legitimate highway purpose and embraced within the easement acquired for highway use. The Commission is merely authorized to do whatever is necessary to be done in order to make a safe, convenient, public way for travel, including the right, if necessary, to exclude the owner and others from using any part of the surface of the way for any permanent or private purpose. Hildebrand v. Southern Bell Tel., etc., Co., 219 N. C. 402, 14 S. E. (2d) 252 (1941).

Except for the purpose of ingress and egress the owner of the fee uses the same, whether for building or cultivation, by permission and not as a matter of right. Hildebrand v. Southern Bell Tel., etc., Co., 219 N. C. 402, 14 S. E. (2d) 252 (1941).

Right to Sue and Be Sued.—The statutes creating the State Highway Commission enumerate their powers and duties in the construction, maintenance, etc., of highways for public benefit, without either expressly or impliedly giving it the right to sue and be sued, but manifestly is an agency of the State for the purpose of exercising administrative and governmental functions. Carpenter v. Atlanta, etc., R. Co., 184 N. C. 400, 114 S. E. 693 (1922).

Injunction Will Not Lie against Commission.—Plaintiffs sued the State Highway and Public Works Commission to enjoin it from enforcing its ordinance restricting the placing of advertising signs along the State highways, alleging that the ordinance was in excess of the authority vested in the Commission and was unconstitutional. The members of the Commission were not made parties defendant. It was held that defendant's demurrer was properly sustained, since injunction will not lie against a State agency to prevent it from committing a wrong. Schloss v. State Highway, etc., Comm., 230 N. C. 489, 53 S. E. (2d) 517 (1949).

Judicial Notice of Highway Ordinance.—An ordinance of the Highway Commission does not come within that class of legislative enactments of which the courts will take judicial notice. State v. Toler, 195 N. C. 481, 142 S. E. 715 (1928).

Grade Crossing Abandoned by Commission.—The commissioners of a county are without power to order a grade crossing abandoned by the Highway Commission reopened to the public, and this power is not given the county by § 136-67. Rockingham v. Norfolk, etc., R. Co., 197 N. C. 116, 147 S. E. 832 (1929).

Where the Commission has taken over the construction of a town, street and bridge, the town is not thereby relieved of liability for an injury proximately caused by a dangerous condition of the street at the bridge when the town has had implied notice of such condition which had existed for several months, this section expressly excepting from its provisions streets in towns and cities. Pickett v. Carolina, etc., Ry., 200 N. C. 750, 158 S. E. 398 (1931).

Applied in Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362 (1939).

Cited in Radford v. Young, 194 N. C. 747, 140 S. E. 806 (1927); State v. Henderson, 207 N. C. 258, 176 S. E. 758 (1934); Wood v. Carolina Tel., etc., Co., 228 N. C. 605, 46 S. E. (2d) 717, 3 A. L. R. (2d) 1 (1948).

§ 136-18.1. Use of Bermuda grass.—The use of Bermuda grass shall be restricted to sections of the highway where the abutting property is not in cultivation, except where the State Highway and Public Works Commission has written consent of the abutting landowner. In long sections of woodland or waste land sufficiently distant from cultivated areas, Bermuda grass may be used. The Commission and its employees shall use every reasonable effort to eliminate Bermuda grass heretofore planted on the shoulders of the highways through cultivated farm areas. (1945, c. 992.)

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.—The State Highway and Public Works Commission is vested with the power to acquire such rights of way and title to such land, gravel, gravel beds, or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. The Commission is also vested with the power to acquire such additional land alongside of the rights of way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes.

Whenever the Commission and the owner or owners of the lands, materials, and timber required by the Commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the Commission is hereby vested with the power to condemn the lands, materials, and timber, and in so doing the ways, means, methods, and procedure of chapter 40, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages: Provided, that in all cases where the State Highway and

Public Works Commission, upon the completion of the particular project, posts a notice at the courthouse door in each county wherein any part of the particular project is situate, and posts such notice in appropriate and suitable size at each end of the project for thirty (30) days to the effect that the project was completed as of a certain date named in the notice, any action for damages for rights of way or other causes shall be brought within six months from the date the project was completed as specified in such notice, and in all cases where the State Highway and Public Works Commission does not post notice as above set forth, any action may be brought within twelve months from the date of the completion of the project.

In case condemnation shall become necessary the Commission is authorized to enter the lands and take possession of the same, and also take possession of such materials and timber as is required by it prior to bringing the proceedings for condemnation, and prior to the payment of the money for the said property.

In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the Commission to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action.

The State Highway and Public Works Commission shall have the same authority, under the same provisions of law hereinbefore provided for construction of State highways, for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways in the State of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right of way acquired or appropriated may, at the option of the Commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the Commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the State Highway and Public Works Commission. The said Commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the State Highway and Public Works Commission, payable out of the construction fund of said Commission.

The action of the State Highway and Public Works Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Commission in furtherance of the public interest.

When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway and Public Works Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway and Public Works Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights of way on other property by the State Highway and Public Works Commission. (1921, c. 2, s. 22; 1923, c.

160, s. 6; C. S., s. 3846(bb); 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115.)

Editor's Note. — The 1931 amendment struck out the following from the first paragraph of this section: "Provided, that the right of condemnation provided for in this article shall not apply to gravel beds or bars, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime, or other earth, or mineral deposits or formations in actual bona fide operation for commercial purposes by private enterprise."

The 1935 amendment added the last paragraph of this section, as it stood prior to the 1937 amendment, which also inserted the second sentence of the fifth paragraph and added the next to last paragraph. The 1949 amendment rewrote the proviso at the end of the second paragraph.

For comment on the operation of this section in connection with chapter 40, see 28 N. C. Law Rev. 403.

Right to Compensation Does Not Rest upon Statute.—The right to compensation for property taken under the power of eminent domain does not rest upon statute but has always obtained in this jurisdiction. Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Commission Not Subject to Suit Except as Provided by Law.—The State Highway and Public Works Commission is an agency of the State and as such is not subject to suit save in a manner expressly provided by statute. Schloss v. State Highway, etc., Comm., 230 N. C. 489, 53 S. E. (2d) 517 (1949). See note to § 136-18.

Procedure for Adjusting Claim Exclusive.—The State Highway Commission is charged with the duty of exercising certain administrative and governmental functions, and statutory method of procedure for adjusting and litigating claims against it is exclusive and may alone be pursued. Latham v. State Highway Comm., 191 N. C. 141, 131 S. E. 385 (1926).

The owner of land cannot maintain an action in tort against the State Highway Commission, and unincorporated governmental agency, for damages caused to his land for its having been taken by the Commission for highway purposes, and is confined for his remedy to the provisions of the special proceedings of this section. McKinney v. North Carolina State Highway Comm., 192 N. C. 670, 135 S. E. 772 (1926).

Six Months' Limitation upon Action for Damages. — The requirement of this section that actions for damages for the taking of a right of way for highway purposes where the owner and the Commission cannot agree upon the amount must be commenced within six months from the completion of the project, is a statute of limitation rather than a condition precedent to the right of action. Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Commission Held Not Estopped to Plead Statute of Limitation.—The fact that representatives of the State Highway and Public Works Commission assured the owners of the servient tenement that the Commission would provide them a safe approach to the new highway, does not estop the Commission from pleading the six months statute of limitations as a defense to their action for damages for the taking of a right of way for highway purposes, there being no evidence that the Commission requested plaintiffs to delay the pursuit of their rights or that it made any agreement, express or implied, that it would not plead the statute. Lewis v. North Carolina State Highway, etc., Comm., 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Either Party May Institute Proceedings.—If the owner and the State Highway and Public Works Commission are unable to agree as to the amount of compensation for taking of property under eminent domain, either party may institute proceedings to have the matter determined. Proctor v. State Highway, etc., Comm., 230 N. C. 687, 55 S. E. (2d) 479 (1949).

A cause of action for breach of contract cannot be joined in a special proceeding for condemnation, under this section and § 40-12. Dalton v. State Highway, etc., Comm., 223 N. C. 406, 27 S. E. (2d) 1 (1943).

Acquisition of Top Soil. — The State Highway and Public Works Commission is authorized by this section to acquire by condemnation top soil deemed necessary and suitable for road construction, "top soil" being included in the generic term "earth," and its power to acquire top soil is not limited to lands contiguous to the highway upon which it is to be used. State Highway, etc., Comm. v. Basket, 212 N. C. 221, 193 S. E. 16 (1937).

Lowering of Canal Bridge.—Petitioner constructed a canal across a county highway and thereafter maintained the bridge constructed over the canal. The State Highway Commission, upon taking over the highway, constructed a new bridge and later constructed a second new bridge which was some two and one-half inches lower than the first. Petitioner instituted a proceeding under this section to recover compensation upon his contention that the lowering of the bridge interfered with the use of the canal in floating his barge under the bridge. It was held that the use of the canal by petitioner was permissive and subject to the easement for highway purposes, and therefore petitioner was not entitled to recover compensation. Dodge v. State Highway, etc., Comm., 221 N. C. 4, 18 S. E. (2d) 706 (1942).

Negligence Causing Cave-In. — Where plaintiffs' building was damaged by a cave-in resulting from alleged negligence in excavation work incident to the construction of a highway overpass, plaintiffs were not relegated to a claim for damages against the Highway Commission as for a taking of their property under this section, and the demurrer of the contractor for the Highway Commission in plaintiffs' action in tort was properly overruled. Broadhurst v. Blythe Bros. Co., 220 N. C. 464, 17 S. E. (2d) 646 (1941).

Right to Just Compensation Where Evidence Is Insufficient to Show Taking Was for Private Purpose.—Where there was no evidence upon the record showing that the taking over of a road as part of the county system was for a private purpose sufficient to raise an issue of fact, plaintiff is remitted to his rights under this section for the recovery of just compensation. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513 (1936).

Measure of Damages for Property Injured—The owner of a water mill which had a right of ingress and egress to his mill over the land of another and had constructed a bridge and maintained a ferry situated to command a large patronage can recover damages for the injury to his property by the building of a highway but not for profits from his mill which is too speculative. Riverside Milling Co. v. State Highway Comm., 190 N. C. 692, 130 S. E. 724 (1925).

Elements of Damage.—In proceedings to take land for a public highway, the measure of damages is the difference in the fair market value of respondent's land immediately before and immediately after the taking, the elements upon which the damages are predicted being the fair market value of the land taken and the injury to respondent's remaining land, less any general and special benefits accruing to respondent from the construction of the highway. State Highway, etc., Comm. v. Hartley, 218 N. C. 438, 11 S. E. (2d) 314 (1940). See Dalton v. State Highway, etc., Comm., 223 N. C. 406, 27 S. E. (2d) 1 (1943).

The measure of damages for the taking of a part of a tract of land for highway purposes is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of the portion left immediately after the taking, which difference embraces compensation for the part taken and compensation for injury to the remaining portion, less general and special benefits resulting to the landowner by the utilization of the property for a highway. Proctor v. State Highway, etc., Comm., 230 N. C. 687, 55 S. E. (2d) 479 (1949).

Offsets Allowed. — In an action to recover damages resulting from the relocation of a public road through the lands of plaintiff, both the special and general benefits accruing to plaintiff by reason of the construction of the highway should be allowed as offsets against any damages which plaintiff might have sustained, and an instruction that limits offsets to special advantages that accrued to plaintiff is erroneous. Bailey v. State Highway, etc., Comm., 214 N. C. 278, 199 S. E. 25 (1938).

At the time of the relocation of a road and when suit was instituted, the rule for the admeasurement of damages was as prescribed by this section prior to the 1923 amendment. Lanier v. Greenville, 174 N. C. 311, 93 S. E. 850 (1917). But before trial, the legislature amended the law by adding: "And in all instances the general and special benefits shall be assessed as offsets against damages," etc. Hence, the law as amended should have been followed in determining the amount plaintiff was entitled to recover. Wade v. State Highway Comm., 188 N. C. 210, 124 S. E. 193 (1924).

Power of Townships.—No such broad and explicit powers to acquire land and road materials by condemnation were given the road commission of Lovelady township, Burke County, by Pub. Loc. Laws 1915, ch. 426, as are given by this section to the State Highway Commission, and courts should not go beyond language of statute in construing it. Lowman v. Abee, 191 N. C. 147, 131 S. E. 277 (1926).

Applied in Calhoun v. State Highway, etc., Comm., 208 N. C. 424, 181 S. E. 271 (1935).

Cited in Greenville v. State Highway Commission, 196 N. C. 226, 145 S. E. 31 (1928); Long v. Randleman, 199 N. C. 344, 154 S. E. 317 (1930); Switzerland Co. v. North Carolina State Highway, etc., Comm., 216 N. C. 450, 5 S. E. (2d) 327 (1939); Bailey v. State Highway, etc., Comm., 230 N. C. 116, 52 S. E. (2d) 276 (1949).

§ 136-19.1. Surplus material derived from grading to be made available to adjoining landowners.—It shall be the duty of the State Highway and Public Works Commission or any contractor working for said Commission to make available to the adjoining landowner any gravel, dirt or material which is available from grading a road or highway through such adjoining lands which is not required or desired by the State Highway and Public Works Commission for use upon any part of the highway, and said surplus material shall not be sold or disposed of by the State Highway and Public Works Commission or any contractor working for them until the adjoining landowner has been given the right to accept and use the same when deposited on any convenient place at or near his land by the contractor or the Commission. (1949, c. 1076.)

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses. — (a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the chairman of the State Highway and Public Works Commission such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Commission shall issue notice requiring the person or company operating such railroad to appear before the Commission, at its office in Raleigh, upon a day named, which shall not be less than ten days or more than twenty days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Commission shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If it shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Commission shall thereupon order the construction of an adequate underpass or overpass at said crossing or it may in its discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Commission upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that one-half of the cost of the construction of such underpass or overpass or the installation of such safety device shall be borne by the Commission and one-half thereof by the railroad company operating such railroad, as provided in section (c) hereof, but in no instance shall the Commission bear any part of the cost of the maintenance of any structure or safety device so constructed or installed except in the maintenance of an overpass.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Commission, as may be agreed upon, and, in case of an underpass, the railroad company shall be responsible for one-half of the expense of all excavations through the existing railroad fill as well as one-half of the complete cost of the structure, including both the foundation and superstructure; and in case of an overpass, the railroad company shall be responsible for one-half of the entire cost of the bridge which will span the opening over the tracks of the railroad from abutment to abutment and including such abutments. And if a grade crossing or unsafe or inadequate underpass or overpass is not eliminated by an adequate overpass or underpass, the railroad company shall be responsible for one-half of the cost of installing gates, alarm signals or other approved safety devices. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Commission, and the Commission shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Commission, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Commission such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Commission may provide.

(d) Within sixty days after the issuance of the order for construction of an underpass or overpass or the installation of other safety device as herein provided for, the railroad company against which such order is issued shall submit to the Commission plans for such construction or installation, and within ten days thereafter said Commission, through its chairman, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Commission by said railroad company within sixty days as aforesaid, the chairman of the Commission shall have plans prepared and submit them to the railroad company. The railroad company shall within ten days notify the chairman of its approval of the said plans or shall have the right within such ten days to suggest such changes and amendments in the plans so submitted by the chairman of the Commission as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Commission shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Commission, said Commission is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Commission shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Commission and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Commission shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Commission shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Commission may provide. If the Commission shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Commission, one-half of the cost of such construction shall upon the completion of said work be paid to such railroad company by the Commission. The Commission may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Commission by the railroad company. If the Commission shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Commission in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Commission to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Commission requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than one hundred dollars in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Commission shall be exclusive.

(g) From any order or decision so made by the Commission the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Commission, but the railroad company shall proceed to comply with such order in accordance with its terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the rights or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Commission for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Commission shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In event the decision on appeal should be that the construction or installation was necessary but the cost thereof unreasonable, then the railroad company shall bear its proportion (not to exceed fifty per cent) of such cost as may be determined on appeal would have been reasonable to meet the necessity in the instant case. Upon said appeal from an order of the Commission, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C. S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17.)

Elimination of Grade Crossings. — This **section** confers upon the Highway Com**mission** the power to eliminate grade cross**ings.** Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133 (1941).

Cited in Rockingham v. Norfolk, etc., R. Co., 197 N. C. 116, 147 S. E. 832 (1929).

§ 136-21. Drainage of highway; application to court; summons; commissioners.—Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right of way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the State Highway and Public Works Commission, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Conservation and Development, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; 1925, c. 122, s. 4; 1933, c. 172, s. 17.)

§ **136-22. View by commissioners; report; judgment.**—The commissioners, or a majority of them, one of whom must be the engineer aforesaid, shall, on a day of which each party is to be notified at least five days in advance, meet on the premises, and view the highway, or proposed highway, and also the lands which may be drained by the proposed canal, and shall determine and report what lands will be drained and benefited by the construction, enlargement or improvement of such canal, and whether said drainage ought to be done exclusively by said highway authorities, and if they are of opinion that the same ought not to be drained exclusively at their expense, then they shall decide and determine the route of the canal, the dimensions and character thereof, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, the extent, area and identity of lands which shall be permitted to drain therein, and providing as far as possible for the effectual drainage of said highway, and the protection and benefit of the lands of all the parties; and they shall apportion the cost of the construction, repair and maintenance of said canal among said highway authorities and said landowners, and report the same to the court, which when confirmed by the clerk shall stand as a judgment of the court against each of the parties, his or its executors, administrators, heirs, assigns or successors. (1925, c. 85, s. 4.)

§ **136-23. Appeal.**—Upon the entry of the judgment or decree aforesaid the parties to said action, or any of them, shall have the right to appeal to the superior court in term time under the same rules and regulations as apply to other special proceedings. (1925, c. 85, s. 5.)

§ **136-24. Rights of parties.**—The parties to such special proceeding shall have all the rights which are secured to similar parties by article one of chapter one hundred fifty-six of this Code and shall be regulated by the provisions thereof and amendments thereto, in so far as the same are not inconsistent herewith. (1925, c. 85, s. 6.)

§ **136-25. Repair of road detour.**—It shall be mandatory upon the State Highway and Public Works Commission, its officers and employees, or any contractor or subcontractor employed by the said Commission, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said Commission and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of the State Highway Fund. (1921, c. 2, s. 11; C. S., s. 3846(s); 1933, c. 172, s. 17.)

§ **136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.**—If it shall appear necessary to the State Highway and Public Works Commission, its officers, or appropriate employees, to close any road or highway coming under its jurisdiction so as to permit of proper completion of work which is being performed, such Commission, its officers or employees, may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, such Commission, its officers or appropriate employees, or its contractor, under authority from such Commission, may erect, or cause to be erected, suitable barriers or obstructions thereon; may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion thereof, is closed; and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a misdemeanor. (1921, c. 2, s. 12; C. S., s. 3846(t); 1933, c. 172, s. 17.)

Liability of Contractor for Injury.—Contractor constructing highway was not relieved, by an order of the State Highway Commission closing the road to travel, of liability for injuries in an automobile collision with an unlighted disabled truck left by defendant on the side of the highway, where on the part of the road where the accident happened barriers had been removed and to defendant's knowledge many people habitually traversed it. Thompson Caldwell Const. Co. v. Young, 294 F. 145 (1923).

§ **136-27. Connection of highways with improved streets; pipe lines and conduits; cost.**—When any portion of the State highway system shall run through any city or town and it shall be found necessary to connect the State highway system with improved streets of such city or town as may be designated as part of such system, the State Highway and Public Works Commission shall build such connecting links, the same to be uniform in dimensions and materials with such State highways: Provided, however, that whenever any city or town may desire to widen its streets which may be traversed by the State highway, the Commission may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the Commission harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights of way, change of grade line, and interference with public-service structures. And the Commission may require such city or town to cause to be laid all water, sewer, gas or other pipe lines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the State highway system shall be surfaced by order of the Commission at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c. 2, s. 16; 1923, c. 160, s. 4; C. S., s. 3846(ff); 1933, c. 172, s. 17.)

Local Modification. — Durham: 1925, c. 312; Town of Siler City: 1935 Pr. c. 143.

City Has Power to Condemn Land. — Under authority of this section a city has the power and authority to condemn land which is wholly within its limits for a street, and the fact that the State Highway and Public Works Commission has aided in the construction of the street within the city limits and relieved the city, is for the benefit of the city and in no way abridges the city's power and authority to condemn the land. Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

Construed with Local Act.—Chapter 56, article 9 of the Acts of 1921 providing for local improvements of the streets of a city or incorporated town by a method of assessing the owners of abutting land, and this section, are to be construed together in pari materia. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71 (1924).

Same—Exercise of Power by City. — Where the State Highway Commission orders a connecting link to be hard-surfaced, and the municipality voluntarily agrees to make the improvement, it is not required, under chapter 56, article 9, that a petition of the abutting owners of land thereon be made. This section gives the governing body of the municipality power to make it an assessment district. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71 (1924).

Street and Highway of Same Width.—This section applies only where the width of the street and the regular highway are the same. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212 (1932).

Power of City to Voluntarily Improve.—Where a city or incorporated town having three thousand inhabitants, or more, has a considerable portion of its streets hard-surfaced, the municipality may voluntarily assess and undertake the improvement of a street being a connecting link in the highway system. Shute v. Monroe, 187 N. C. 676, 123 S. E. 71 (1924).

Invalid Assessment May Be Subsequently Validated. — Where an incorporated town, under authority of this section, levies an assessment against abutting property owners for street improvements in paving a strip on either side of a State highway running through the town, but such levies are made without a petition of the abutting owners as prescribed by § 160-82, the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934).

Cited in Long v. Randleman, 199 N. C. 344, 154 S. E. 317 (1930).

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over one thousand dollars that the Commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the State Highway and Public Works Commission, to a responsible bidder, the right to reject any and all bids being reserved to the Commission.

No action shall be brought upon any bond given by any contractor of the Commission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within six (6) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and performed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; C. S., s. 3846(v); 1925, cc. 260, 269; 1933, c. 172, s. 17.)

Editor's Note. — The 1923 amendment added the second paragraph which was rewritten by the 1925 amendment.

Section Prospective.—This section falls within the rule or presumption that the effect of the statute is to be prospective only, in the absence of an expressed or clearly implied intent to the contrary. Overman & Co. v. Maryland Casualty Co., 193 N. C. 86, 136 S. E. 250 (1927). See Independence Trust Co. v. Massachusetts, etc., Ins. Co., 190 N. C. 680, 130 S. E. 547 (1925).

"Other person," as used in this section, is not broad enough to take in any person having a claim against the contractor. The principle of ejusdem generis applies. Roper Lbr. Co. v. Lawson, 195 N. C. 840, 143 S. E. 847 (1928).

Immunity of Contractor from Liability for Defect.—One constructing a roadway under contract with State Highway Commission did not share the immunity given that body by this section against liability for damages resulting from defective condition of the highway. Thompson Caldwell Const. Co. v. Young, 294 F. 145 (1923).

Under this section bonds are construed liberally for the protection of those who furnish labor and materials in the prosecution of public works. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121 (1927), citing Electric Co. v. Deposit Co., 191 N. C. 653, 132 S. E. 808 (1926).

Contract and Bond Are Construed Together in Favor of Surety.—In determining liability of surety on a contractor's bond for the building of a State highway, the contract and the bond of indemnity will be construed together strictly in favor of the surety. Roper Lbr. Co. v. Lawson, 195 N. C. 840, 143 S. E. 847 (1928).

Surety Is Chargeable with Notice of Factors Affecting Risk. — In entering into the contract the surety is chargeable with notice, not only of the financial ability and integrity of the contractor, but also with notice as to whether he possesses the plant, equipment, and tools required in undertaking the particular work, or will be compelled to rent and hire the same or some part thereof, all of which matters are factors to be considered in determining the risk and upon which the surety fixes the premiums exacted for executing the bond. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121 (1927).

Extent of Surety's Liability.—The surety on a contractor's bond for the building of a public road or highway is presumed to have acquainted itself with the character of the road contracted for by its principal, and the local conditions that would affect the cost of its construction, and where its bond includes payment by the contractor of labor and material to be employed or used therein, it is liable to one who has rented to the contractor a steam shovel, boiler, etc., necessary to the construction of the highway under local existing conditions. The renting of such machines was but the substitution of mechanical power for manual labor. Wiseman v. Lacy, 193 N. C. 751, 138 S. E. 121 (1927).

Laborers, etc., Having No Statutory Lien.—The surety bond given to the State Highway Commission by a contractor for the construction of a highway under the provisions of this section contemplates the protection of laborers and materialmen who have no statutory lien. Roper Lbr. Co. v. Lawson, 195 N. C. 840, 143 S. E. 847 (1928).

Materials and Supplies Protected by Surety's Bond.—Groceries and provisions furnished to the contractor and necessarily consumed in and about the construction of the work, foodstuffs for the horses and mules furnished to the contractor and necessarily consumed in and about the construction of the work, and gas and oil necessarily consumed in and about the construction of the work, and for which the contractor is liable, are protected by the surety's bond. Overman & Co. v. Maryland Cas. Co., 193 N. C. 86, 136 S. E. 250 (1927).

Candies, cigars, cigarettes, tobacco, ginger ale and other soft drinks sold by a contractor at a laborer's camp in constructing a highway and charged in the payroll against the laborers buying them, are not necessaries under the terms of the surety bond on the contract. Overman & Co. v. Maryland Cas. Co., 193 N. C. 86, 136 S. E. 250 (1927).

One action only shall be instituted against the bonding company. Cavarnos-Wright Co. v. Blythe Bros. Co., 217 N. C. 583, 8 S. E. (2d) 924 (1940).

Allegation of Compliance — Where the complaint in an action on the bond given by a contractor for construction of a highway alleges that a statement of the claim against the surety on the bond was filed with the defendant surety company within six months after the project was completed, it is a sufficient allegation of compliance with the provisions of this section. Bank of Wadesboro v. Northwestern Casualty, etc., Co., 202 N. C. 148, 162 S. E. 236 (1932).

Venue of Suit.—See Independence Trust Co. v. Massachusetts, etc., Ins. Co., 190 N. C. 680, 130 S. E. 547 (1925).

Cited in Overman & Co. v. Great American Indemnity Co., 199 N. C. 736, 155 S. E. 730 (1930); Southern Surety Co. v. Plott, 28 F. (2d) 698 (1928); Gulf States Creosoting Co. v. Loving, 120 F. (2d) 195 (1941).

§ 136-29. Settlement of controversies between Commission and awardees of contracts.—Upon the completion of any contract awarded by the State Highway and Public Works Commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty days from the time of receiving his final estimate, file with the State Highway Engineer a claim for such amount as he deems himself entitled to under the said contract; and the State Highway Engineer shall, within thirty days from the receipt of the said claim, pass upon the same and notify the contractor in writing of his decision. If the contractor desires to do so, he may, within thirty days from the receipt of the said decision of the State Highway Engineer, appeal in writing to the State Highway and Public Works Commission. Upon receipt of said appeal the chairman of the State Highway and Public Works Commission shall promptly appoint some competent person, and the claimant shall likewise select a competent person, and these two shall elect a third such person, the three of whom shall constitute a board of review, and shall promptly set a time and place for the hearing. The committee or the claimant shall have power and authority to summon persons and papers and the committee shall make a complete investigation of all matters relating to the said appeal and the contract and the work out of which it grows, and determine all matters at issue in a fair and equitable manner according to their best judgment. The decision of the said committee shall be final and any amount which they may award the said contractor will be a valid claim against the State Highway and Public Works Commission; provided, however, an appeal may be had from the decision of the said committee to the Superior Court of Wake County under the same terms, conditions and procedure as appeals from the Industrial Commission, as provided in § 97-86. The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the State Highway and Public Works Commission and any contractor, and no provision in said contracts shall be valid that are in conflict herewith. (1939, c. 318; 1947, c. 530.)

Editor's Note. — The 1947 amendment rewrote the third sentence which formerly provided for the appointment of a "committee" of three members of the Commission, and substituted therefor the present "board of review." In view of the amendment it would seem that the word "committee" in the fourth and fifth sentences should read "board of review".

For comment on this section, see 17 N. C. Law Rev. 340.

§ 136-30. Uniform guide and warning signs on highways.—The State Highway and Public Works Commission is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this State and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the Commission and shown on official maps issued by the Commission. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.

The Commission shall have the power to control all signs within the right of way of State highways.

The Commission may erect proper and uniform signs directing persons to roads and places of importance. (1921, c. 2, ss. 9(a), 9(b); C. S., ss. 3846(q), 3846(r); 1927, c. 148, s. 54; 1933, c. 172, s. 17.)

Editor's Note. — See 13 N. C. Law Rev. 101.

§ **136-31. Local traffic signs.**—Local authorities in their respective jurisdictions shall cause appropriate signs to be erected and maintained, designating residence and business districts, highway and steam or interurban railway grade crossings and such other signs as may be deemed necessary to carry out the provisions of §§ 136-30 to 136-33. Local authorities shall erect appropriate signs giving notice of special local parking and other regulations. (1927, c. 148, s. 55.)

§ **136-32. Other than official signs prohibited.**—No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of §§ 136-30 and 136-31, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the State Highway and Public Works Commission or by any local authority referred to in § 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and punished in the discretion of the court. The Commission may remove any signs erected without authority. (1921, c. 2, s. 9(b); C. S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17.)

§ **136-33. Injuring or removing signs.**—Any person who shall deface, injure, knock down or remove any sign posted as provided in §§ 136-30 and 136-31 shall be guilty of a misdemeanor. (1927, c. 148, s. 57.)

§ **136-33.1. Signs for protection of cattle.**—Upon written request of any owner of more than five head of cattle, the State Highway and Public Works Commission shall erect appropriate and adequate signs on any road or highway under the control of the State Highway and Public Works Commission, such signs to be so worded, designed and located as to give adequate warning of the presence and crossing of cattle. Such signs shall be located at points agreed upon by the owner and the State Highway and Public Works Commission at points selected to give reasonable warning of places customarily or frequently used by the cattle of said owner to cross said road or highway, and no one owner shall be entitled to demand the placing of signs at more than one point on a single or abutting tracts of land. (1949, c. 812.)

§ **136-34. State Highway and Public Works Commission authorized to furnish road equipment to municipalities.**—The State Highway and Public Works Commission is hereby authorized to furnish municipalities road maintenance equipment to aid such municipalities in the maintenance of streets for which no State highway funds are provided, upon such rental agreement as may be agreed upon by the State Highway and Public Works Commission and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the State Highway and Public Works Commission shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of said Commission. (1941, c. 299.)

§ 136-35. Co-operation with other states and federal government.—It shall also be the duty of the State Highway and Pubic Works Commission, where possible, to co-operate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. (1915, c. 113, s. 12; C. S., 3584; 1933, c. 172, s. 17.)

§ 136-36: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-37. Basis of apportionment between municipalities; annual certification of allocations.—Of such funds as may be appropriated from time to time for the maintenance, repair, improvement, construction, reconstruction or widening of highways and streets in cities and towns, one-third shall be apportioned or allocated as between the several cities and towns by the State Highway and Public Works Commission upon the basis that the population of each city or town bears to the total population of all the cities and towns at the last preceding United States census, adjusted to take care of any cities or towns incorporated after the taking of the last census, and one-third upon the basis that the mileage of streets which form a part of the State highway system in all the cities and towns and one-third on the basis of relative need as between the various cities and towns as determined by the State Highway and Public Works Commission. Each year before the first day of June the State Highway and Public Works Commission shall certify an accurate account of such allocations to each city or town. (1941, c. 217, s. 2; 1951, c. 386.)

Editor's Note.—This section, which was repealed by Session Laws 1951, c. 260, s. 4, was apparently reinstated by the 1951 amendment, which inserted the words "adjusted to take care of any cities or towns incorporated after the taking of the last census."

§§ 136-38 to 136-41: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-41.1. Maintenance, etc., of municipal streets which form part of State highway system. — From and after July 1, 1951, all streets within municipalities which now or hereafter may form a part of the State highway system shall be maintained, repaired, improved, widened, constructed and reconstructed by the State Highway and Public Works Commission, to the same extent and in the same manner as is done on roads and highways of like nature outside the corporate limits and the costs of such activities shall be paid from the State Highway and Public Works Fund: Provided, that municipalities shall be required to provide one-third of the cost of acquisition of right of way for new streets or for relocating or widening old streets. The appropriations in the Budget Appropriation Bill of 1951-53, the same being chapter 642 of the Session Laws of 1951, for the maintenance of State highways, both within and without cities and towns, together with any other appropriations for such purposes hereafter made, shall be used by the State Highway and Public Works Commission for the purposes specified in this section as well as for maintaining other portions of the State highway system. (1951, c. 260, s. 1; 1951, c. 948, s. 1.)

Editor's Note.—The preamble to Session Laws 1951, c. 260, from which §§ 136-41.1 through 136-41.3 are codified, states: "It is the declared policy of the State: 1. That all streets in cities and towns which are now, or hereafter may be, a part of, continuation of, or a connecting link between highways, shall be declared a part of the State public roads system, and shall be wholly constructed, reconstructed and maintained by the State Highway and Public Works Commission out of the State highway funds. 2. The cost of the construction, reconstruction and maintenance of all other streets in the cities and towns of the State, shall be equalized, between the cities, towns, and the State, as may be determined by the General Assembly. The construction and maintenance of such streets shall remain under the jurisdiction of the cities and towns."

§ 136-41.2. Appropriation to municipalities; allocation of funds.—In addition to the amounts to be expended under the preceding section, there is hereby annually appropriated out of the State Highway and Public Works Fund a sum equal to the amount that was produced during the preceding fiscal year by ½ of one-cent tax on each gallon of motor fuel taxed by §§ 105-434 and 105-435, to be allocated in cash on or before October first each year after March 15, 1951, to the cities and towns of the State in accordance with the following formula:

One-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities as indicated by the latest certified federal decennial census, and one-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each elegible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system.

No municipality shall be eligible to receive funds under §§ 136-41.1 and 136-41.2 unless it has within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality. It shall be the duty of the mayor of each municipality to report to the State Highway and Public Works Commission such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of §§ 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the State Highway and Public Works Commission, the State Highway and Public Works Commission may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951.

No allocation to cities and towns shall be made under the provisions of this section from the one cent per gallon additional tax on gasoline imposed by chapter 1250 of the Session Laws of 1949, unless and until said additional one cent per gallon gasoline tax produces funds which are not needed for or committed by said chapter 1250 of the Session Laws of 1949, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said chapter 1250 of the Session Laws of 1949. The State Highway and Public Works Commission is hereby authorized to withhold each year an amount not to exceed 1% of the total amount appropriated in § 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than sixteen (16) feet. In order to obtain the necessary information to distribute the funds herein allocated, the State Highway and Public Works Commission may require that each municipality eligible to receive funds under §§ 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The State Highway and Public Works Commission may in its discretion require the certification of mileage on a biennial basis. (1951, c. 260, s. 2; 1951, c. 948, ss. 2, 3.)

§ **136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.**—The funds allocated to cities and towns under the provisions of § 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes.

Each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of §§ 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall file a statement under oath with the chairman of the State Highway and Public Works Commission showing in detail the expenditure of funds received by virtue of §§ 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

In the discretion of the local governing body of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 it may contract with the State Highway and Public Works Commission to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The State Highway and Public Works Commission within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the State Highway and Public Works Commission in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system. (1951, c. 260, s. 3; 1951, c. 948, s. 4.)

§ **136-42. Markers on highway; co-operation of Commission.**—The State Highway and Public Works Commission is hereby authorized to co-operate with the State Department of Archives and History in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17; 1943, c. 237.)

Editor's Note. — By virtue of Session Laws 1943, c. 237, the "State Department of Archives and History" has been substituted for "North Carolina Historical Commission."

§ **136-43. Expenditure of highway funds for erection of historical markers.** — Whereas, the State of North Carolina is rich in points of historic interest, such as the first attempt at colonization on this continent, the efforts of the thirteen colonies to gain independence, Revolutionary and Civil War history, numerous birthplaces and graves of foremost North Carolinians who have played important roles in the history of the nation, as well as other historic shrines; and

Whereas, such facts are not generally known save to a few historians, and in many instances only to residents of the immediate territory; and

Whereas, no effective method has yet been adopted or provided for imparting knowledge of all these important facts to citizens of this and other states; and

Whereas, at the request and pursuant to a resolution of the Department of Conservation and Development, and the State Department of Archives and History, a group of five historians, one from each of the following named institutions of learning: Duke University, University of North Carolina, North Carolina State College, Wake Forest College and Davidson College, together with the State Historian, have agreed to serve as an advisory committee without expense to the State, and to designate such points of historic interest in the order of their importance, and to provide appropriate wording for their proper marking;

Now, therefore, in order to enable the Department of Conservation and Development to carry out this plan, in co-operation with the State Department of Archives and History, and the State Highway Commission; the General Assembly of North Carolina do enact:

That expenditures by the State Highway and Public Works Commission in co-operation with the Department of Conservation and Development and the State Department of Archives and History for the purpose of carrying out the program outlined in the preamble hereof is hereby declared to be a valid expenditure of State highway maintenance funds: Provided, that not more than ten thousand dollars in any one fiscal year shall be expended for this purpose, but this limitation shall not be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766.)

Editor's Note. — The 1951 amendment substituted "ten thousand dollars in any one fiscal year" for "five thousand dollars in any one year" formerly appearing in the last paragraph.

By virtue of Session Laws 1943, c. 237, the words "State Department of Archives and History" have been substituted for "State Historical Commission".

§ 136-44. Maintenance of grounds at home of Nathaniel Macon and grave of Anne Carter Lee.—The Highway and Public Works Commission is hereby authorized and directed through the highway supervisor of the Warren County District, to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the county of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County. (1939, c. 38.)

Article 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.—The general purpose of the laws creating the State Highway and Public Works Commission is that said Commission shall take over, establish, construct, and maintain a State-wide system of hard-surfaced and other dependable highways running to all county seats, and to all principal towns, State parks, and principal State institutions, and linking up with state highways of adjoining states and with national highways into national forest reserves by the most practical routes, with special view of development of agriculture, commercial and natural resources of the State, and for the further purpose of permitting the State to assume control of the State highways, repair, construct, and reconstruct and maintain said highways at the expense of the entire State, and to relieve the counties and cities and towns of the State of this burden. (1921, c. 2, s. 2; C. S., s. 3846(a); 1943, c. 410.)

Editor's Note. — The 1943 amendment rewrote the first part of this section.

The statutes in Parts I and II of this article reflect the growth and culmination of general State control of the public roads, and must be read in this light. Sections 136-45 through 136-47 are codified from the act which authorized the State Highway System of 1921—the first important step. Sections 136-48 through 136-50, enacted in 1927, and repealed by 1943, c. 410, authorized an extension of this System. Sections 136-51 through 136-53 authorized the assumption of control by the State of the county public roads. Public Laws 1933, c. 172, s. 32, changed "State Highway Commission," etc., to "State Highway and Public Works Commission."

As to the general policy of the State as to highway, see Young v. Board, 190 N. C. 52, 128 S. E. 401 (1925).

Laws Repealed. — Former §§ 3580-3593 of the Consolidated Statutes were repealed by this article insofar as the former conflicted with the latter and under the latter power is conferred on the State Highway Commission to take over county highways as a part of the highway system upon such terms and agreements with the county commissioners as may be made by them as authorized by the article. Lassiter v. Board, 188 N. C. 379, 124 S. E. 738 (1924).

Statutes Construed in Pari Materia. — The statute relating to the creation, maintenance, etc., of a State-wide system of public roads, and the amendatory act providing for the taking over of county highways for State maintenance are to be construed together in pari materia. Board of Com'rs v. State Highway Comm., 195 N. C. 26, 141 S. E. 539 (1928).

The purpose of the act of 1921 was to encourage co-operation between the Highway Commission and the county authorities. Young v. Board, 190 N. C. 52, 128 S E. 401 (1925).

The Highway Commission Is an Administrative Body. — Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Broad Discretion Given. — This section and § 136-18, subsec. (b), give broad discretionary powers to the State Highway Commission in establishing, altering and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886 (1923).

Control of Discretion as to Change of Highway.—The State Highway Commission, neither by contract nor otherwise, can be controlled beforehand in the exercise of its discretion, conferred on it by statute, as to the change of location of a public highway. Johnson v. Board, 192 N. C. 561, 135 S. E. 618 (1926).

Change of Route as Violating Rights of Owners.—Those who have acquired property along the "proposed" route, as shown in connection with the consideration by the legislature of the bill which became enacted into what is now this article, acted with implied notice of the powers conferred upon the Commission in changing the route, and cannot maintain the position that they have been deprived of the due-process-of-law provision in the Constitution, whether of a vested right or otherwise. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Liability of Commission for Torts, etc.—The State Highway Commission is an unincorporated agency of the State to perform specific duties in relation to the highways of the State and is not liable in damages for the torts of its subagencies and an action may not be maintained against it or a county acting thereunder in trespassing upon the lands of a private owner, or for the faulty construction of its drains, or the taking of a part of the lands of such owner for the use of the highway, the remedy prescribed by the statute being exclusive. Latham v. State Highway Comm., 191 N. C. 141, 131 S. E. 385 (1926).

Liability for Defects in Highway. — Counties in North Carolina are not liable for damage resulting from defective condition of their highways, being political agencies of the State; nor are county commissioners individually liable, unless they acted corruptly or of malice. Thompson Caldwell Const. Co. v. Young, 294 F. 145 (1923).

Power of County Commissioners and Highway Commission to Contract. — The boards of county commissioners and the State Highway Commission are vested with powers to enter into contracts and agreements for the construction of roads forming a part of the State highway system. Young v. Board, 190 N. C. 52, 128 S. E. 401 (1925)

Actions in Regard to Condemnation. — The State Highway and Public Works

Commission is an unincorporated agency of the State, charged with the duty of exercising certain governmental functions, and like the State may only be sued by a citizen when authority is granted by the General Assembly, and the methods prescribed for the entertainment of such an action are exclusive. While the various acts creating the State Highway Commission and prescribing its powers and duties do not declare in so many words that it may "sue and be sued," it sufficiently appears from the language of the statutes that in the matter of condemnation of land for highway purposes, and with respect to the method of arriving at compensation therefor, right of action lies in the manner set out by the statutes, and the procedure prescribed is open to the property owner as well as to the Highway Commission. Yancey v. North Carolina State Highway, etc., Comm., 222 N. C. 106, 22 S. E. (2d) 256 (1942).

Injunction. — The action of the State Highway Commission in building the highways and bridges of the State is of public interest and equity will not enjoin them in this work when injury by flooding lands may probably result in the future, there being an adequate remedy at law. Greenville v. State Highway Comm., 196 N. C. 226, 145 S. E. 31 (1928).

Cited in Parker v. State Highway Comm., 195 N. C. 783, 143 S. E. 871 (1928).

§ **136-46. Establishment of system of State highways; work leading to hard-surfaced construction.**—The purpose and intent of chapter two of the Public Laws of 1921 is to establish a system of State highways for the State hard-surfacing said highways as rapidly as possible, and maintaining the entire system of said highways in the most approved manner as outlined in that act. Work on the various links in the State highway system shall be of such a character as will lead to ultimate hard-surfaced construction as rapidly as money, labor, and materials will permit, and to a State system of durable hard-surfaced, all-weather roads, connecting the various county seats, principal towns, and cities. (1921, c. 2, s. 3; C. S., s. 3846(b).)

§ **136-47. Routes and maps; objections; changes.**—The designation of all roads comprising the State highway system as proposed by the State Highway and Public Works Commission shall be mapped, and there shall be publicly posted at the courthouse door in every county in the State a map of all the roads in such county in the State system, and the board of county commissioners or county road-governing body of each county, or street governing body of each city or town in the State shall be notified of the routes that are to be selected and made a part of the State system of highways; and if no objection or protest is made by the board of county commissioners of the county, road-governing body of any county, or street-governing body of any city or town in the State within sixty days after the notification before mentioned, then and in that case the said roads or streets, to which no objections are made, shall be and constitute links or parts of the State highway system. If any objections are made by the board of county commissioners or county road-governing body of any county or street-governing body of the city or town, the whole matter shall be heard and determined by the State Highway and Public Works Commission in session, under such rules and regulations as may be laid down by the Commission, notice of the time and place of hearing to be given by the Commission at the courthouse door in the county, and in some newspaper published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. A map showing the proposed roads to constitute the State highway system is attached to chapter two of the Public Laws of one thousand nine hundred and twenty-one and made a part hereof. The roads so shown can be changed, altered, added to or discontinued by the Commission: Provided, no roads shall be changed, altered or discontinued so as to disconnect county seats, principal towns, State or national parks or forest reserves, principal State institutions, and highway systems of other states. The rights of way to all roads taken over under this section shall be not less than thirty (30) feet: Provided, that no toll road shall be taken over under this section unless by agreement or condemnation as herein provided. (1921, c. 2, s. 7; C. S., s. 3846(c); 1933, c. 172, s. 17; 1943, c. 410.)

Editor's Note. — The effect of the decisions cited below was modified by §§ 136-54 through 136-59.

Section Construed with § 136-18. — Section 136-18 giving the Commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with this section, which limits the discretion conferred in the former section, among other things, in respect to routes between "county seats, principal towns, etc.," according to a map referred to; and as to those matters particularly mentioned in this section the discretion was taken away from the Commission by express statutory provision. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Power to Change Route. — Where the Commission, in pursuance of § 136-47 have, as required, posted at the courthouse door of a county a map showing the proposed route, and the county roads to be taken, the limitation of sixty days expressed in the statute is upon the time allowed the county to object; and a subsequent change made by the State Highway Commission in the proposed route prior to the time of building the highway is not reviewable by the court in the absence of an abuse by the Commission of the discretionary power conferred on it by the statute. Road Comm. v. State Highway Comm., 185 N. C. 56, 115 S. E. 886 (1923).

The map referred to in this section as a "proposed" route of the State highway system, by placing certain towns along its proposed route, does not affect the discretionary authority of the Highway Commission in locating the highway between county seats, or prevent the Commission from changing the route from them, but its determination is reviewable by the courts as a mixed question of law and fact, whether the change decided upon goes by the principal towns as required by the statute. Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Same—After Vote Taken by County.— Where the State Highway Commission has taken over a certain public road within a county, as a link in the State system of public highways, and the county in which it is situate has contracted to loan the State Commission a certain amount of money to be expended on its improvement, subject to approval of the voters in issuing bonds for the purpose, and there is nothing in the contract that would require the route of the existing road to continue as it then was laid out, the discretionary power vested in the State Highway Commission as to changing the route, vesting in them by statute, will not be interfered with by the courts, at the suit of the taxpayers residing in a corporated or unincorporated town, contending that they would not have voted for the bond issue except upon representation made to them that the then existing route would not be changed. Johnson v. Board, 192 N. C. 561, 135 S. E. 618 (1926).

Presumption as to Posting of Map.—It is presumed on appeal, when the record is silent in relation thereto, that the Commission made publication of the proposed adoption of a link in the State highway system, by posting the map thereof at the county seat, etc., as the law requires. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

Change from Route Finally Adopted.— The Commission is not authorized by statute to make an entire change of route in its system of State highway between county seats from one that it has finally adopted. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927), citing Carlyle v. Highway Commission, 193 N. C. 36, 136 S. E. 612 (1927).

But the power of the Commission to slightly or immaterially vary the location of the highway in question is not at an end until its final acceptance thereof. Smith v. State Highway Comm., 194 N. C. 333, 139 S. E. 606 (1927), approving Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

Enjoining Unauthorized Change. — An injunction will lie against the State Highway Commission from proceedings to make a change in a link of the State system of public highway unauthorized by the statute. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

Effect of Finding of Trial Court on Appeal. — A finding by the trial judge that an entire change of route in a link of highways connecting two county seats was only temporary is not binding upon the Supreme Court on appeal when as a matter of law, upon the evidence, it is conclusively made otherwise to appear. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

Failure to Protest Location.—Upon the failure of any principal town along the proposed route to object thereto, it is not a proper or necessary party to the proceedings, and the trial court may refuse its motion to be made a party. Newton v. State Highway Comm., 194 N. C. 159, 138 S. E. 601 (1927).

§§ **136-48 to 136-50:** Repealed by Session Laws 1943, c. 410.

Part 2. County Public Roads Incorporated into State Highway System.

§ **136-51. Maintenance of county public roads vested in State Highway and Public Works Commission.**—From and after July first, one thousand nine hundred and thirty-one, the exclusive control and management and responsibility for all public roads in the several counties shall be vested in the State Highway and Public Works Commission as hereinafter provided, and all county, district, and township highway or road commissioners, by whatever name designated, and whether created under public, public-local, or private acts, shall be abolished:

Provided, that for the purpose of providing for the payment of any bonded or other indebtedness, and for the interest thereon, that may be outstanding as an obligation of any county, district, or township commission herein abolished, the boards of county commissioners of the respective counties are hereby constituted fiscal agents, and are vested with authority and it shall be their duty to levy such taxes on the taxable property or persons within the respective county, district, or township by or for which said bonds or other indebtedness were issued or incurred and as are now authorized by law to the extent that the same may be necessary to provide for the payment of such obligations; and the respective commissions herein abolished shall on or before July first, one thousand nine hundred and thirty-one, turn over to said boards of county commissioners any moneys on hand or evidences of indebtedness properly applicable to the discharge of any such indebtedness (except such moneys as are mentioned in paragraph (a) above); and all uncollected special road taxes shall be payable to said boards of county commissioners, and the portion of said taxes applicable to indebtedness shall be applied by said commissioners to said indebtedness, or invested in a sinking fund according to law. All that portion of said taxes or other funds coming into the hands of said county commissioners and properly applicable to the maintenance or improvement of the public roads of the county shall be held by them as a special road fund and disbursed upon proper orders of the Commission.

Provided, further, that in order to fully carry out the provisions of this section the respective boards of county commissioners are vested with full authority to prosecute all suitable legal actions. (1931, c. 145, s. 7; 1933, c. 172, s. 17.)

Editor's Note. — In bringing forward Public Acts 1931, c. 145, s. 7, to appear as this section of the General Statutes, the paragraph formerly designated as subsection (a) was omitted, but the reference to it in the present second paragraph of the section was retained.

Cited in In re Edwards, 206 N. C. 549, 174 S. E. 505 (1934); Grady v. Grady, 209 N. C. 749, 184 S. E. 512 (1936); Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362 (1939).

§ **136-52. Eminent domain with respect to county roads.**—To the end that the State Highway and Public Works Commission may the better take over the maintenance and improvement, reconstruction and construction of the public roads in the various counties, together with the bridges and railroad grade crossings thereon, and may the better carry out the intent and purposes of § 136-51, the Commission is vested, in respect of and to the public roads in the various counties, with the same powers of and responsibility of eminent domain as are conferred and imposed upon the Commission in §§ 136-18 and 136-19 in respect of and to the State highway system, and the Commission is authorized and empowered to adopt rules and regulations governing the use of the various county road systems and to promulgate the same. (1931, c. 145, s. 10; 1933, c. 172, s. 17.)

§ **136-53. Map of county road systems posted; objections.**—On or before May first, one thousand and nine hundred and thirty-one, the designation of all roads comprising the several county road systems as are proposed to be taken over for maintenance and improvement by the State Highway and Public Works Commission shall be mapped, and there shall be publicly posted at the courthouse door in each county a map of all the roads in such county to be contained in the county road system of such county, and the board of county commissioners of such county and the street-governing body of each city or town in such county shall be notified of the roads that are to be selected and to be made a part of the county road system of such county. If no objection is made by the board of county commissioners or the street-governing body of any city or town in such county within thirty (30) days after the notification herein provided for, then and in that event the roads to which no objections are made shall be and constitute the county road system for such county. If objections are made by the board of county commissioners of the county or the street-governing body of any city or town in the county, the Commission shall as soon as practicable send an agent to such county who shall take the matter up with the view of adjusting the objections and agreeing with the county commissioners or the street-governing body of any city or town. If such agent and the board of county commissioners or the street-governing body of any city or town cannot agree, then the whole matter shall be heard and determined by the Commission in session under such rules and regulations as may be made by the Commission. Notice of the time and place of the hearing shall be given by the Commission at the courthouse door and in some newspaper, if any, published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. It is the intent and purpose of this section that all roads legally established and used as public roads in the various counties on March 20, 1931, are to and shall be included in the county road systems of the various counties. Maps showing the proposed roads to constitute the county road systems in the several counties have been printed and bound and are now on file in the office of the Commission, and are the maps which shall be posted. If it shall appear to the Commission prior to the posting of the maps under this section that any road or roads which should be included in the county road systems of any county have been omitted from the map of any county as printed, the Commission may change such maps so as to include such road or roads before posting. (1931, c. 145, s. 11; 1933, c. 172, s. 17.)

Cited in Speight v. Anderson, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Part 3. Power to Make Changes in Highway System.

§ **136-54. Power to make changes.**—Subject to the provisions of §§ 136-56, 136-57 and 136-60 the State Highway and Public Works Commission shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and substitute new sections for, any portion of the State highway system, as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. (1927, c. 46, s. 1; 1933, c. 172, s. 17.)

Editor's Note. — The relation between §§ 136-54, 136-55, 136-56, 136-57 and 136-60 should be noted. Section 136-55 prescribes a procedure for the change or abandonment of portions of the State highway system, under which the decision of the Commission is final. However, §§ 136-54 and 136-55 are subject to the provisions of § 136-56 (requiring the consent of the street governing body of a town before the number of State highways entering certain towns may be reduced); § 136-57 (requiring the consent of the road governing body of the county if the road in question has been located and constructed in accordance with plans and specifications prepared by and on file with the Commission); and § 136-60 (requiring the consent of the county commissioners if the road in question was a portion of the county road system taken over by the State by virtue of §§ 136-51 through 136-53). Thus, §§ 136-54 and 136-55 must be read with these limitations in mind.

Validity of Statute.—Chapter 46 of Public Laws 1927 was held valid. Parker v.

State Highway Comm., 195 N. C. 783, 143 S. E. 871 (1928).

Elimination of Underpass. — Where the State Highway Commission, in the interest of public safety, builds an overpass and relocates a highway to cut out dangerous curves and an inadequate underpass, it has the authority to order the underpass closed, if not by authority expressly conferred then in the exercise of the police power by an appropriate agency of the State. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133 (1941).

§ **136-55. Notice to local road authorities.**—Before any road, which is being maintained by the State Highway and Public Works Commission as a part of the State highway system, can be changed, altered, or abandoned, the chairman or his duly authorized agent shall notify the road governing authorities of the county or counties in which said change, alteration, or abandonment is proposed, of the extent, nature and character of the proposed change, alteration or abandonment, and a map showing the old location and the new proposed location shall be posted at the courthouse door. If within thirty days after the giving of such notice and the posting of such map the road-governing body of such county or the street-governing body of any county seat or principal town immediately affected thereby, shall protest the proposed change, alteration or abandonment by filing a written notice of such protest with the Commission at Raleigh, the Commission shall thereupon designate three members of the Commission, one of whom may be the chairman, to hear such protest. The place, which shall be within the county, and the time of such hearings shall be fixed by the chairman and notice given to the protesting parties. Such hearings shall be held publicly and all persons desiring to be heard shall be heard. At the close of such hearing the committee shall publicly state their decision. The protesting parties may appeal from such decision to the whole Commission and such appeal shall be heard at a regular or duly called meeting for this purpose in the city of Raleigh and notice given to the appellants. The decision of the whole Commission shall be determined by roll call vote duly recorded upon the minutes of the Commission.

Any county seat or principal town shall be deemed "immediately affected" if the proposed change or alteration shall enter or leave said town by streets other than those used for such purposes prior to the proposed change. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17.)

Editor's Note.—The 1931 amendment inserted the words "as a part of the State highway system" near the beginning of the first sentence. It struck out the words "commissioner of the district in which said road is located" formerly appearing in the same sentence and inserted in lieu thereof "chairman or his duly authorized agent." It also struck out the words "the others to be from districts other than that from which the protest is filed," formerly appearing before the phrase "to hear such protest" at the end of the second sentence.

Consent of Unimportant Town.—Where, in the exercise of its discretion, the Commission has made a slight change of an existing route, the consent of an unimportant town is unnecessary. Yadkin College v. State Highway Comm., 194 N. C. 180, 138 S. E. 717 (1927).

§ **136-56. Number of highways entering town not reduced without consent.** — The number of State highways entering the corporate limits of a county seat, principal town, or town in which is located any of the principal State institutions, now served by the State highway system, shall not be reduced without the consent of the street governing body of said town. (1927, c. 46, s. 3.)

A town with approximately 100 people and no substantial industries is not a principal town as contemplated in this section. Yadkin College v. State Highway Comm., 194 N. C. 180, 138 S. E. 717 (1927).

§ **136-57. Consent of local road authorities.**—No portion of the State highway system which has heretofore, or which shall hereafter be located and constructed in accordance with plans and specifications prepared by and on file with the State Highway and Public Works Commission, shall be changed or abandoned without the consent of the road-governing body of the county in which said road is situated. (1927, c. 46, s. 4; 1933, c. 172, s. 17.)

§ **136-58. Confirmation.**—All changes in, alterations of, and/or abandonments of any portion of the State highway system heretofore made by the State Highway and Public Works Commission which are not now the subject of litigation, are hereby ratified, approved and confirmed and the newly-established routes are hereby made a part of the State highway system as fully and to the same extent as if they had appeared upon the map and surveys made and posted by the Commission as required in § 136-47 and no action shall hereafter be maintained in any court of this State against the Commission on account of such change, alteration and/or abandonment. (1927, c. 46, s. 6; 1933, c. 172, s. 17.)

§ **136-59. No court action but by local road authorities.**—No action shall be maintained in any of the courts of this State against the State Highway and Public Works Commission to determine the location of any State highways or portion thereof, by any person, corporation, or municipal corporation, other than the road-governing body of the county in which said road is situated, or the county seat or principal town affected, as defined in § 136-55 by any change, alteration or abandonment. (1927, c. 46, s. 7; 1933, c. 172, s. 17.)

Discretion Not Reviewable.—It is within the discretion of the road-governing body of a county to object or not to the partial change in a road by the Commission and their action is not subject to review in the courts. And mandamus will not lie to control such discretion. Parker v. State Highway Comm., 195 N. C. 783, 143 S. E. 871 (1928).

Decision of Commission Final.—The decision of the State Highway Commission upon appeal by the board of commissioners from an adverse decision is final and conclusive. Parker v. State Highway Comm., 195 N. C. 783, 143 S. E. 871 (1928).

Cited in Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513 (1936).

§ **136-60. Road taken over not to be abandoned without consent of county commissioners.**—No road, which shall be a part of any county road system as the same shall be finally adopted in pursuance of § 136-53, shall be abandoned or materially changed without the consent of the board of county commissioners of the county in which said road is located, except the State Highway and Public Works Commission may be relieved of all responsibility for county roads in areas where the federal government acquires exclusive ownership and control. (1931, c. 145, s. 12; 1943, c. 410.)

Editor's Note. — The 1943 amendment added the exception clause at the end of the section.

§ **136-61. Petition by county commissioners to change or abandon roads or build new roads.**—The board of county commissioners of any county may, when in the opinion of said board the best interests of the people of said county or of any particular community thereof will be subserved thereby, petition the State Highway and Public Works Commission to change or abandon any road in the county road system or to add thereto any new road. Said petition shall be filed with the chairman of the Commission, who shall personally or by his duly constituted deputy, after conference with the board of county commissioners of said county, make diligent inquiry into and study of the proposed change, abandonment, or addition, and if in his opinion the public interest demands the same, such change, abandonment, or addition shall be made: Provided, however, that if any such change or abandonment of a road shall affect a road connecting with any street of any city or town in such county, no such change or abandonment shall be made until the street-governing body of such town shall have been duly notified thereof and given opportunity to be heard upon the question. If the chairman of the Commission shall be of the opinion that the public interest does not demand the change, abandonment, or addition petitioned for, the board of county commissioners filing such petition may appeal from his decision to the whole Commission, who shall, at such time and place as shall be designated, due notice of which shall be given the parties interested, give public hearing on the matter. The action of the Commission upon all such matters shall be final: Provided, however, any petition which has been declined by the Commission may be again presented under the provisions hereof after the expiration of twelve (12) months. (1931, c. 145, s. 13; 1933, c. 172, s. 17.)

Taking Held to Be for Public Purpose.—Under this section the county commissioners petitioned that certain roads in the county be taken over as a part of the county system. Plaintiff, owner of part of the land involved, obtained a temporary injunction prohibiting the taking over of the road, claiming the taking was for a private and not a public purpose. The court found that the taking was for a public purpose, and dismissed the action, it appearing from the pleadings that the proposed road would give four families access to the county seat and that the road would constitute a part of a through scenic highway. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513 (1936).

Scenic Value May Be Considered. — In taking over a road as a part of the highway system, the scenic value of such road and its necessity as a part of the system of scenic highways for the public may be considered in determining whether taking over the road is for a public or private purpose. Reed v. State Highway, etc., Comm., 209 N. C. 648, 184 S. E. 513 (1936).

§ **136-62. Petition of citizens to county commissioners to ask Commission to make road changes.**—When any number of citizens of any county or any community thereof, not less than twenty-five (25), shall sign and file with the board of county commissioners of such county a petition asking that any road in the county road system of the county be changed or abandoned or that any new road be added to said system, it shall be the duty of said board of county commissioners to make full and thorough investigation, and if in their opinion the best interests of the people of said county or of the particular community thereof to be affected require such change, abandonment, or addition, the said board of county commissioners shall file and prosecute before the State Highway and Public Works Commission the petition provided for in § 136-61. (1931, c. 145, s. 14; 1933, c. 172, s. 17.)

§ **136-63. Public hearings on road changes.**—All public hearings provided for in §§ 136-61 and 136-62 shall, when practicable, be held in the county in which the road or roads under consideration and the subject of said hearing, shall be located. (1931, c. 145, s. 15.)

§ **136-64. Filing of complaints with Commission; hearing and appeal.**—In the event of failure to maintain the roads of the State highway system or any county road system in good condition, the board of county commissioners of such county may file complaint with the State Highway and Public Works Commission. When any such complaint is filed, the Commission shall at once investigate the same, and if the same be well founded, the said Commission shall at once order the repair and maintenance of the roads complained of and investigate the negligence of the persons in charge of the roads so complained of, and if upon investigation the person in charge of the road complained of be at fault, he may be discharged from the service of the Commission. The board of commissioners of any county, who shall feel aggrieved at the action of the Commission upon complaint filed, may appeal from the decision of the Commission to the Governor, and it shall be the duty of the Governor to adjust the differences between the board of county commissioners and the Commission. (1921, c. 2, s. 20; C. S., s. 3846(11); 1931, c. 145, s. 17; 1933, c. 172, s. 17.)

§§ **136-65, 136-66**: Repealed by Session Laws 1943, c. 410.

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ **136-67. Neighborhood public roads.**—All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the State Highway and Public Works Commission, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Public Welfare, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any State or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of §§ 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the State Highway and Public Works Commission and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old roads, is hereby invested with the easement or right of way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the State Highway and Public Works Commission is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the State or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the State Highway and Public Works Commission in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215.)

Editor's Note. — The 1949 amendment rewrote this section as changed by the 1941 amendment.

Purpose of Section.—The purpose of this section, defining neighborhood public roads, was to bring the designated roads within the procedure prescribed in the original act, Public Laws 1931, c. 448 (now a part of § 136-53). Speight v. Anderson, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Section Applies Only to Established Easements and Roads.—This section refers to traveled ways which were at the time of the adoption of the 1941 amendment established easements or roads or streets in a legal sense, and it cannot be construed to include ways of ingress and egress existing by consent of the landowner as a courtesy to a neighbor, nor to those adversely used for a time insufficient to create an easement. Speight v. Anderson, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Road Maintained for Convenience of Landowner's Tenants.—Where all the evidence tended to show that road was laid out and maintained primarily as a convenience for those who resided on defendants' tracts, no continuous use for a public purpose was disclosed within the meaning of this section. Speight v. Anderson, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Persons living along a highway which had been taken over by the State Highway Commission, and subsequently abandoned by it, are "interested citizens" within the meaning of this section, and may maintain a proceeding to have the road established as a "neighborhood public road." Grady v. Grady, 209 N. C. 749, 184 S. E. 512 (1936).

This section merely fixes the status of roads abandoned by the State Highway Commission as public roads and does not invest any private easement in owners of property abutting the abandoned road, their right to the continued use of such road being the same as that of the public generally. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133 (1941).

What Constitutes Abandonment.—Where the State Highway Commission, in the interest of public safety, builds an overpass and relocates a short section of the road in order to cut out dangerous curves and an inadequate underpass, and thereafter tears up the section of old road lying on one side of the underpass, the short section of old road is not a highway abandoned by the Commission which remains open and in general use by the public within the purview of this section and does not become a public road. Mosteller v. Southern Ry. Co., 220 N. C. 275, 17 S. E. (2d) 133 (1941).

Use of Abandoned Way.—Where plaintiffs' allegations and evidence tended to show that the alleged public way to an old wharf had been abandoned by the Highway Commission when it took over the county roads, and that plaintiffs did not reside along the alleged public road, and that it was not necessary to them as a way of egress and ingress to their homes, but they used same in getting to the old wharf to their boats for hunting and fishing parties, they failed to establish their right to the use of the passway as a neighborhood public road. Cahoon v. Roughton, 215 N. C. 116, 1 S. E. (2d) 362 (1939).

Question of Discontinuance Raised by Special Proceeding. — The question of the discontinuance of a road which is a neighborhood public road, within the meaning of this section, must be determined by a special proceeding instituted before the clerk, and where the question has been presented by petition to the board of county commissioners the judgment of the superior court on appeal dismissing the petition is correct, but that part of the judgment providing that the road shall remain open is erroneous and will be stricken out on further appeal to the Supreme Court. In re Edwards, 206 N. C. 549, 174 S. E. 505 (1934).

Adjudication of Road as a Neighborhood Public Road Not Authorized.—Where it was controverted whether the road in question was used permissively as a way to a private cemetery or whether it was used by the public under claim of right to a community cemetery, petitioners were not entitled to have it adjudicated a neighborhood public road solely upon a finding by the jury that it was constructed or reconstructed with employment relief funds under the supervision of the Department of Public Welfare. Raynor v. Ottoway, 231 N. C. 99, 56 S. E. (2d) 28 (1949).

Testimony that relief funds were used under authorization of the Department of Public Welfare on a cemetery project and that the supervisor in charge of the work, upon suggestion of an interested worker, had the workers improve the road to the cemetery, was held insufficient to establish that the reconstruction of the road was authorized or directed by the Department of Public Welfare within the meaning of this section. Raynor v. Ottoway, 231 N. C. 99, 56 S. E. (2d) 28 (1949).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.—The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situate. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for trial de novo and the procedure established under chapter 40, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C. S., s. 3835; 1931, c. 448.)

Local Modification. — Burke, Caldwell, Catawba, Lincoln: 1931 Pub. Loc. c. 313; Graham: 1935 Pub. Loc. c. 224.

Cross Reference.—See note to § 136-69.

Editor's Note.—Prior to the 1931 amendment the board of supervisors had authority to lay out and discontinue cartways.

This section and § 136-69 to Be Strictly Construed. — This and the following section, relating to the establishment of cartways for ingress and egress to a highway over intervening lands, are in derogation of common law and must be strictly construed. Brown v. Glass, 229 N. C. 657, 50 S. E. (2d) 912 (1948).

Municipality Has Exclusive Control of Streets and Ways. — The law relating to cartways was not intended to withdraw from cities and towns any part of their exclusive control over their streets and other public ways and confers no jurisdiction on the clerk of the superior court to establish an alley within an incorporated town. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

An action to obtain a judicial declaration of plaintiff's right to an easement appurtenant and by necessity over the lands of defendants is authorized by chap. 1, art. 26, and the superior court has jurisdiction, it not being a special proceeding to establish a cartway, which must be instituted before the clerk. Carver v. Leatherwood, 230 N. C. 96, 52 S. E. (2d) 1 (1949).

A proceeding in Haywood County to establish cartways over the lands of others should be instituted before the board of county commissioners, and not before the clerk, and the clerk of the superior court of that county has no jurisdiction of a proceeding for this relief instituted before him. Rogers v. Davis, 212 N. C. 35, 192 S. E. 872 (1937).

Applied in Garris v. Byrd, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615 (1938).

§ **136-69. Cartways, tramways, etc., laid out; procedure.**—If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than fourteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid in to the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102;

Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; 1917, c. 282, s. 1; C. S., s. 3836; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1.)

Cross Reference.—See note to § 136-68.

Editor's Note. — The first 1921 amendment made this section applicable to industrial and manufacturing plants, and inserted in the first sentence the words "affording necessary and proper means of ingress thereto and egress therefrom." The 1931 amendment made material changes in the section, and the 1951 amendment added the second paragraph.

Section Strictly Construed. — This section is in derogation of the rights of landowners, and must be strictly construed. Warlick v. Lowman, 103 N. C. 122, 9 S. E. 458 (1889).

Section Must Be Followed.—The right to establish cartways, tramways, etc., over the lands of another, when no such right arises by implication of law, is regulated in this State by statute, and one who desires to cross the lands of another for the purpose of removing timber, or for other purposes, must follow the statute or purchase the right. Roper Lumber Co. v. Richmond Cedar Works, 158 N. C. 161, 73 S. E. 902 (1912).

Petitioner's Land Must Be Used for One of Purposes Enumerated. — This section enumerates the purposes for which the petitioner's land must be used in order to confer upon the owner the right of a "way of necessity" over another's land, and the listing of them excludes other uses not named, the presence of one of those named becoming a condition precedent to the exercises of the right. It will be observed that all of them respect substantial traffic or transportation of products taken from the land. Brown v. Glass, 229 N. C. 657, 50 S. E. (2d) 912 (1948).

Petitioners are not entitled to the establishment of a cartway over the intervening lands of another for the purpose of egress to the highway for a home they propose to construct on their adjoining land, since such use does not come within those enumerated in this section. Brown v. Glass, 229 N. C. 657, 50 S. E. (2d) 912 (1948).

And Petitioner Must Have No Other Adequate Means of Ingress and Egress.—Petitioner is entitled to the establishment of a cartway across the lands of another only if petitioner's land is not adjacent to a public road and has no other adequate and proper means of ingress and egress to the highway, and he is not entitled to the relief if he has such means available to him at the time. Garris v. Byrd, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

Effect of Permissive Way.—If a permissive way is in all respects reasonable and adequate as a proper means of ingress and egress, the petition for a cartway should be denied. Conversely, if the permissive nature of the way renders it insufficient to meet the requirement of "other adequate means of transportation" within the meaning of the statute, the relief should be granted. Where the court below found that the permissive way available to petitioner was "in all respects reasonable and adequate" and then concluded that the petitioner was entitled to a cartway, the Supreme Court deemed it devisable to vacate the judgment entered and remand the cause for a rehearing. Garris v. Byrd, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

Where an owner of land not reached by any public road for 37 years used a road across defendant's land without exercising any ownership or possession except passing back and forth, and occasionally cutting out a tree or other obstruction, the way was neither a public highway nor a private cartway. State v. Norris, 174 N. C. 808, 93 S. E. 950 (1917).

"Necessary, Reasonable and Just."—For the owner of lands, cultivating the same, to obtain a way of necessity over the lands of another to a public road, he must show that such way is "necessary, reasonable and just," under the provisions of this section; and where it appears, without sufficient denial, that there is a public road leading to the cultivated lands, the petition is properly dismissed. Rhodes v. Shelton, 187 N. C. 716, 122 S. E. 761 (1924).

Tract Devised without Egress to Public Road.—Where a petition for a "way of necessity" over the lands of another is filed in the superior court, and the petition alleges that the petitioner was devised a tract of land without any way of egress to a public road except over the land of another devisee of the testator, and there is no allegation that such a way over the land of the other devisee had theretofore existed, and there is no stipulation in the devise for a way of ingress and egress to a given point, the petitioner's exclusive remedy is under the provisions of this and the previous section, and the proceedings in the superior court were properly nonsuited White v. Coghill, 201 N. C. 421, 160 S. E. 472 (1931).

Undedicated Neighborhood Road Not a Public Road.—A neighborhood road not dedicated to the public, but used by the public under permission or license of the owner of the land, is not a public road within the meaning of this section. Collins v. Patterson, 119 N. C. 602, 26 S. E. 154 (1896).

Cartway Quasi-Public Road.—Cartways are regarded as quasi-public roads, and the condemnation of private property for such a use has been sustained upon that ground as a valid exercise of the power of eminent domain. Cook v. Vickers, 141 N. C. 101, 53 S. E. 740 (1906).

Requisites for Cartways.—The fact that there is no public road leading to the premises upon which a petitioner for a cartway resides, and that such way will be more convenient to him, will not warrant its establishment; it must be made to appear further that the petitioner has no other way of egress and ingress, and that it is necessary, reasonable and just. Burwell v. Sneed, 104 N. C. 118, 10 S. E. 152 (1889).

A cartway will not be granted, under this section as a mere matter of convenience, but only when it is necessary, reasonable and just that the petitioner should have it. Warlick v. Lowman, 103 N. C. 122, 9 S. E. 458 (1889).

Where the applicant for a cartway over the land of another has already one or more convenient rights of way over the land of another to the public road or other public place to which he seeks access, his application shall be rejected, and if an order for a cartway has been previously obtained, the cartway will be discontinued on the petition of the owner of the land. Plimmons v. Frisby, 60 N. C. 200 (1864). See also, Burgwyn v. Lockhart, 60 N. C. 264 (1864).

Special Local Law Applicable. — While, under the provisions of this section a petitioner who already has an outlet from his lands to a public road, reasonably sufficient for the purpose, is not allowed to have an additional or different cartway established merely because a shorter and better route can be shown, it may be otherwise when the petitioner has proceeded under the provisions of a special local law applicable to a certain county allowing it under certain conditions, the provisions of the local law controlling those of the general statute on the subject. Farmer v. Bright, 183 N. C. 655, 112 S. E. 420 (1922).

Road Impassable.—Where one's lands are connected with the public road, but by an impassable tract, he is entitled to a cartway over the lands of another. Mayo v. Thigpen, 107 N. C. 63, 11 S. E. 1052 (1890).

Opinion of Witnesses.—Upon the trial of an issue whether a proposed cartway was necessary and reasonable, the opinions of witnesses are not competent, the question not being one of science, peculiar skill or professional knowledge. Burwell v. Sneed, 104 N. C. 118, 10 S. E. 152 (1889).

Cartway May Be Laid Out for One Person.—A cartway may be awarded over the lands of another in favor of an individual citizen, when the necessity for it exists, in a manner that is reasonable and just, by proper proceedings upon petition to the township board of supervisors. Ford v. Manning, 152 N. C. 151, 67 S. E. 325 (1910).

Lumber Company Cannot Condemn Tramway. — A lumber company cannot condemn land for a tramway solely for carrying its own timber, but, at most, it can obtain only a temporary easement, ex-necessitate, under this section, and this only by a strict compliance with the statute. Leigh v. Garysburg Mfg. Co., 132 N. C. 167, 43 S. E. 632 (1903).

This section is invalid, so far as it authorizes the construction of railways over the lands of others for the exclusive use of the owner of the timber, because authorizing the taking of private property for a use which is not public, though the removal of the timber by means of such railways would aid in the development of the natural resources of the State. Cozard v. Kanawha Hardwood Co., 139 N. C. 283, 51 S. E. 932 (1905).

Failure to Establish Cartway.—The failure to establish a cartway according to law is a matter of defense to be pleaded in the trial of an indictment for breaking down a gate across it. State v. Combs, 120 N. C. 607, 27 S. E. 30 (1897).

Inference of Public Road Rebutted by Nonuser. — The inference from evidence tending to show that a way over and through a man's land is a public road may be rebutted by evidence of nonuser for more than twenty years. Burgwyn v. Lockhart, 60 N. C. 264 (1864).

Private Easement.—A mere right of way which a deed gives the grantee over the grantor's remaining lands is not a "cartway," for obstruction of which indictment will lie under § 136-90. State v. Haynie, 169 N. C. 277, 84 S. E. 385 (1915). See also, State v. Lance, 175 N. C. 773, 94 S. E. 721 (1917).

Termini Must Be Fixed. — In ordering the laying out of a cartway, it is the duty of the court, in its judgment, to fix both the termini of such way. Burden v. Harman, 52 N. C. 354 (1860).

Omission of Justices' Names from Record.—Where the record of an order made in a county court for laying out a cartway recited—"seven justices being present,"—without giving their names it was held that such record was fatally defective, and the order void. Link v. Brooks, 61 N. C. 499 (1868).

Petition Held Sufficient.—Petitioners alleged that they had used a road over defendant's land for fifty years in going from petitioners' farm to the public highway, that such road was the only means of ingress and egress from petitioners' farm to the highway, that respondents had blocked the road, and prayed that if respondents did not open up the road for use by petitioners, that the court appoint a jury of view to lay off a roadway as an outlet for petitioners. Respondents demurred on the ground that petitioners did not allege a right of easement over respondents' land by grant, necessity or prescription. It was held that petitioners were not asserting a vested right over the road barricaded by respondents, and the demurrer should have been overruled, since the petition was sufficient to state a cause of action for the establishment of a neighborhood public road under the provisions of this section. Pearce v. Privette, 213 N. C. 501, 196 S. E. 843 (1938).

The laying off of a cartway and the adjudication of damages are matters for the jury of view, subject to review by the court. Garris v. Byrd, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

When Appeal May Be Taken.—The action of township supervisors in ordering the establishment of a cartway under the former statute is such a final determination of the matter as will support an appeal to the board of commissioners, and thence through the superior to the Supreme Court, although the order may not have been executed. Warlick v. Lowman, 101 N. C. 548, 8 S. E. 120 (1888.)

Where in a proceeding to establish a private cartway over lands of defendants, the clerk entered judgment that petitioner was not entitled to the relief demanded, and petitioner appealed to the superior court, the judgment of the clerk determined the rights of the parties and an appeal to the superior court was proper and not premature, and the order of the superior court remanding the case to the clerk upon the apprehension that an appeal would not lie until after the appointment of a jury of view and the laying out of the cartway and the assessment of damages, is erroneous. Dailey v. Bay, 215 N. C. 652, 3 S. E. (2d) 14 (1939).

How Appeal Heard.—Upon such appeal to the board of commissioners, they should have considered the whole matter de novo upon the merits, and so likewise the superior court, upon appeal to it. Warlick v. Lowman, 101 N. C. 548, 8 S. E. 120 (1888).

Sufficiency of Existing Cartway Matter for Jury.—Where there is evidence tending to show that the plaintiffs' lands are situated off of a public highway, with a cartway thereto of great inconvenience, and the board of road supervisors have ordered that a proposed way, more convenient and shorter in distance be laid off, and have held that such way is necessary, reasonable and just, and an appeal has been taken by the owners of the land from this order, and the owners of the lands condemned have further appealed to the superior court, an issue arises for the determination of the jury as to whether sufficient reasons exist for the proposed way, and a judgment of the lower court that the plaintiffs are not entitled to it as a matter of law is reversible error. Brown v. Mobley, 192 N. C. 470, 135 S. E. 304 (1926).

Appeal Lies from Order Appointing Jury.—In a proceeding to establish a cartway or way of necessity from lands of petitioners to a state highway, under this and the preceding section, an order of the clerk adjudging that petitioners are entitled to the relief and appointing a jury of view to "lay off" the cartway is a final determination of the right to the easement, leaving only the mechanics of execution to the jury of view, and therefore an appeal to the superior court by respondents whose lands are affected is not premature, and judgment of the superior court dismissing the appeal and remanding the cause to the clerk, is erroneous. Triplett v. Lail, 227 N. C. 274, 41 S. E. (2d) 755 (1947).

Cited in Pool v. Trexler, 76 N. C. 297 (1877); Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615 (1938).

§ 136-70. Alteration or abandonment of cartways, etc., in same manner. — Cartways or other ways established under this article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same.

(1798, c. 508, ss. 1, 2, 3, P. R.; 1834, c. 16, s. 1; R. C., c. 101, s. 38; Code, s. 2057; 1887, c. 46, s. 2; 1887, c. 266; Rev., s. 2694; C. S., s. 3837; 1931, c. 448.)

Cross Reference.—See "Local Modification" under § 136-68.

Editor's Note. — The 1931 amendment rewrote this section.

When Petitioner Acquires Servient Tract.—A petitioner who has acquired a right, by order of the court, to have a cartway over the land of another, and who has afterwards obtained title to the servient tenement, has a right to obstruct and discontinue such cartway. Jacocks v. Newby, 49 N. C. 266 (1857).

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615 (1938).

§ **136-71. Church roads and easements of public utility lines laid out on petition; procedure.**—Necessary roads or easements and right of ways for electric light lines, power lines, water lines, sewage lines, and telephone lines leading to any church or other place of public worship may be etablished in the same manner as set forth in the preceding sections of this article upon petition of the duly constituted officials of such church. (1872-3, c. 189, ss. 1-3, 5; Code, ss. 2062, 2064; Rev., ss. 2687, 2689; C. S., s. 3838; 1931, c. 448; 1949, c. 382.)

Editor's Note.—Prior to the 1931 amendment the proceedings were before the board of supervisors. The 1949 amendment inserted the provision as to easements and rights of way for electric light and other lines.

Cited in Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615 (1938).

ARTICLE 5.

Bridges.

§ **136-72. Load limits for bridges; liability for violations.**—The State Highway and Public Works Commission shall have authority to determine the maximum load limit for any and all bridges on the State highway system or on any county road systems, to be taken over under §§ 136-51 to 136-53, and post warning signs thereon, and it shall be unlawful for any person, firm, or corporation to transport any vehicle over and across any such bridge with a load exceeding the maximum load limit established by the Commission and posted upon said bridge, and any person, firm, or corporation violating the provisions of this section, shall, in addition to being guilty of a misdemeanor, be liable for any or all damages resulting to such bridge because of such violation, to be recovered in a civil action, in the nature of a penalty, to be brought by the Commission in the superior court in the county in which such bridge is located or in the county in which the person, firm, or corporation is domiciled; if such person, firm, or corporation causing the damage shall be a nonresident or a foreign corporation, such action may be brought in the Superior Court of Wake County. (1931, c. 145, s. 16; 1933, c. 172, s. 17.)

§ **136-73. Duty as to bridges of millowners on, or persons ditching or enlarging ditches across, highways.**—It shall be the duty of every owner of a watermill which is situate on any public road, and also of every person who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain or canal across a public road, respectively, to keep at his own expense in good and sufficient repair all bridges that are or may be erected or attached to his milldam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain or canal on the highway, so long as they may be needed by reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained: Provided, no public road or highway shall be cut except in accordance with provisions of § 136-93. (1817, c. 941, s. 1, P. R.; 1846, c. 95, s. 1; R. C., c. 101, s. 24; 1881, c. 290; Code, s. 2036; 1887, c. 261; Rev., s. 2697; C. S., s. 3795; 1943, c. 410.)

Editor's Note. — The 1943 amendment added the proviso at the end of the section.

Duty of One Constructing Ditch. — When the proprietor of lands, for the purpose of draining the same, shall construct a ditch, drain or canal across a public road, it shall be the duty of the said proprietor to build a bridge over said ditch, canal, etc., and keep the same in repair. Nobles v. Langly, 66 N. C. 287 (1872).

Owners of land cutting ditches through a highway are bound to maintain bridges over them. Norfleet v. Cromwell, 64 N. C. 1 (1870).

Priority of Road to Mill.—In an action for failing to keep a sufficient bridge over a canal cut across a public road, brought under this section, the plaintiff need not allege that the road was laid off before the mill was erected, in order to negative the proviso in that statute. Wadsworth v. Stewart, 97 N. C. 116, 2 S. E. 190 (1887).

Overseer Not Liable.—When a civil action was brought against the overseer to recover damages alleged to have been incurred in consequence of his negligently permitting a bridge over a canal to become unsafe and in bad condition, it was competent for him to show that the canal had been dug across the public road by the proprietor of the land adjacent thereto, and for the purpose of draining the same, and that a bridge had been built over the canal by the proprietor of the land, and had been kept up by him for several years. Nobles v. Langly, 66 N. C. 287 (1872).

Stated in Dodge v. State Highway, etc., Comm., 221 N. C. 4, 18 S. E. (2d) 706 (1942).

Cited in Holmes v. Upton, 192 N. C. 179, 134 S. E. 401 (1926).

§ 136-74. Liability for failure to maintain bridges; penalty and damages.—If any owner of a watermill situated on any public road, or any other person whose duty it is under this chapter to keep up and repair bridges built across any public road or across any ditch, drain, or canal, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, unless repair was prevented by unavoidable circumstances, any bridges which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor and shall be liable for such damages as may be sustained. (1817, c. 941, ss. 2, 3, P. R; R. C., c. 34, s. 40; R. C., c. 101, s. 25; 1876-7, cc. 90, 211; Code, ss. 1086, 2037; Rev., ss. 2703, 3772, 3773; C. S., s. 3796.)

Editor's Note.—As to liability of county commissioners, see Holmes v. Upton, 192 N. C. 179, 134 S. E. 401 (1926).

§ 136-75. Railroad companies to maintain bridges which they make necessary. — All railroad companies shall keep up, at their own expense, any bridge on or over public roads, when the building of such bridge was made necessary in establishing the railroad; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same, and in addition shall be guilty of a misdemeanor. (1838, c. 5, ss. 1-4; R. C., c. 101, s. 35; Code, s. 2054; Rev., ss. 2700, 3775; C. S., s. 3797.)

§ 136-76. Counties to provide draws for vessels.—The county or counties which may erect bridges shall, by their boards of commissioners, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber rafts, said draw may not exceed twenty feet in width. (R. C., c. 101, s. 34; Code, s. 2053; 1891, c. 168; Rev., s. 2698; C. S., s. 3798.)

Cross Reference.—As to liability of commissioners for neglect, see § 153-15.

It is within the discretion of the commissioners as to whether the draws in the bridges should turn both ways. Lenoir County v. Crabtree, 158 N. C. 357, 74 S. E. 105 (1912).

When Commissioner Excused for Failure to Provide Draws.—Where in an action for the penalty under § 153-15, for defendant's failure and neglect, as county commissioner, to construct a draw in a county bridge across a river, it appeared that there had been a question whether the stream above the bridge was navigable, and that during six months or more of the year the water was insufficient to float boats and that the draw had been put in as soon as the question of the navigability was determined by the engineering department of the United States government, it was proper for the trial judge to direct a verdict for the defendant. Staton v. Wimberly, 122 N. C. 107, 29 S. E. 63 (1898).

§ **136-77. Owner of bridge to provide draws on notice.**—Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months' notice of such intention in one of the public journals of the State, published nearest the river or creek intended to be navigated, and to the owner of the bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter. (1838-9, c. 5; 1846, c. 51, ss. 1, 2; R. C., c. 101, s. 32; Code, s. 2052; Rev., s. 2699; C. S., s. 3799.)

§ **136-78. Railroad companies to provide draws.**—Railroad companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass. (1846, c. 51, ss. 1, 2; R. C., c. 101, s. 32; Code, s. 2051; Rev., s. 2701; C. S., s. 3800.)

§ **136-79. Solicitor to prosecute for injury to county bridges.**—The solicitors of the superior court are authorized and directed to institute suits in the name of the State, in the counties wherein the injuries may be done, for the recovery of damages, against all persons who shall willfully or negligently injure any public bridge belonging to any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties injured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided. (1846, c. 11, ss. 1, 2; R. C., c. 101, s. 36; Code, s. 2055; Rev., s. 2705; C. S., s. 3801.)

Injunction May Issue. — The county commissioners, under the general powers granted by this section may bring an action for an injunction to restrain the use of a nonfloatable stream of floatage of logs, causing damage to a county bridge over such stream. Commissioners v. Catawba Lumber Co., 115 N. C. 590, 20 S. E. 707 (1894).

§ **136-80. Fastening vessels to bridges misdemeanor.**—If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county. (R. S., c. 104; R. C., c. 101, s. 31; 1858-9, c. 58, s. 1; Code, s. 2050; 1887, c. 93, s. 3; Rev., s. 3774; C. S., s. 3804.)

§ 136-81. Commission may maintain footways. — The State Highway and Public Works Commission shall have the power to erect and maintain adequate footways over swamps, waters, chasms, gorges, gaps, or in any other places whatsoever, whenever said Commission shall find that such footways are necessary, in connection with the use of the highways, for the safety and convenience of the public. (1817, c. 940, ss. 1, 2, P. R.; R. C., c. 101, s. 17; Code, s. 2029; Rev., s. 2695; C. S., s. 3785; 1921, c. 2; 1931, c. 145; 1933, c. 172, s. 17.)

ARTICLE 6.

Ferries and Toll Bridges.

§ 136-82. State Highway and Public Works Commission to establish and maintain ferries.—The State Highway and Public Works Commission is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Commission, be expedient.

To accomplish the purpose of this section said Commission is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Commission represent the fair value of the public service rendered. (1927, c. 223; 1933, c. 172, s. 17.)

§ 136-83. Control of county public ferries and toll bridges transferred to State.—The State Highway and Public Works Commission shall succeed to all the rights and duties vested in the county commissioners or county highway commissions on the thirty-first day of March, one thousand nine hundred and thirty-one, with respect to the maintenance and operation of any public ferries or toll bridges forming links in the county highway systems: Provided, that where there is an outstanding indebtedness against any such ferries or bridges, all tolls collected shall be turned over to the county treasurer to be applied to debt service until all indebtedness against such ferry or bridge has been discharged. (1931, c. 145, s. 38; 1933, c. 172, s. 17.)

Editor's Note. — The 1935 amendment added the proviso.

§ 136-84. State Highway and Public Works Commission to fix charges.—The State Highway and Public Works Commission is directed, authorized, and empowered to fix and determine the charges to be made by all ferries and toll bridges connecting any State highway within the State of North Carolina, which said charges shall be uniform for the same service rendered. (Ex. Sess. 1921, c. 86, s. 1; C. S., s. 3821(a); 1933, c. 172, s. 17.)

§ 136-85. Extent of power to fix rates.—The State Highway and Public Works Commission is vested with all the rights, powers and authorities granted the Utilities Commission in the hearing and fixing of rates for ferries and toll bridges now vested in it by law. (Ex. Sess. 1921, c. 86, s. 2; C. S., s. 3821(b); 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97; 1943, c. 410.)

Editor's Note. — The 1943 amendment substituted the words "ferries and toll bridges" for the words "any purposes."

§ 136-86. Existing rights of appeal conferred.—All rights given any firm, person or corporation in any hearing before the Utilities Commission in the fixing of rates by way of appeal shall exist in all cases of charges fixed by the State Highway and Public Works Commission under and by virtue of §§ 136-84 to 136-87. (Ex. Sess. 1921, c. 86, s. 3; C. S., s. 3821(c); 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97.)

§ **136-87. Making of excessive charges a misdemeanor; punishment.**—Any person, firm or corporation who shall charge any sum greater than the amount fixed by the State Highway and Public Works Commission for crossing any ferry or toll bridge connecting any State highway within the State of North Carolina, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding the sum of one hundred dollars or imprisoned not exceeding six months, or both in the discretion of the court. (Ex. Sess. 1921, c. 86, s. 4; C. S., s. 3821(d); 1933, c. 172, s. 17.)

§ **136-88. Authority of county commissioners with regard to ferries and toll bridges; rights and liabilities of owners of ferries or toll bridges not under supervision of Commission.**—Subject to the provisions of §§ 136-67, 136-99, and 153-198, the boards of commissioners of the several counties are vested, in regard to the etablishment, operation, maintenance, and supervision of ferries and toll bridges on public roads not under the supervision and control of the State Highway and Public Works Commission, with all the power and authority regarding ferries and toll bridges vested by law in county commissioners on the thirty-first day of March, one thousand nine hundred and thirty-one. And the owners or operators of ferries or toll bridges not under the supervision and control of the State Highway and Public Works Commission shall be entitled to the same rights, powers, and privileges, and subject to the same duties, responsibilities and liabilities, to which owners or operators of ferries or toll bridges were entitled or were subject on the thirty-first day of March, one thousand nine hundred and thirty-one.

§ **136-89. Safety measures; guard chains or gates.**—Each and every person, firm or corporation, owning or operating a public ferry upon any sound, bay, river, creek or other stream, shall have securely affixed and attached thereto, at each end of the same, a detachable steel or iron chain, or in lieu thereof a steel or iron gate, and so affixed and arranged that the same shall be closed or fastened across the opposite end from the approach, whenever any motor vehicle, buggy, cart, wagon, or other conveyance shall be driven upon or shall enter upon the same; and shall be securely fastened or closed at each end of the ferry after such motor vehicle, buggy, cart, wagon, or other conveyance shall have been driven or shall have entered upon the same. And the said gates or chains shall remain closed or fastened, at each end, until the voyage across the stream upon which said ferry is operated shall have been completed. The State Highway and Public Works Commission, as to ferries under its supervision, and the respective boards of county commissioners, as to other ferries, shall fix and determine a standard weight or size of chain, and a standard size, type, or character of gate, for use by said ferries, leaving optional with the said owner or operator the use of chains or gates.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 133; C. S., ss. 3825(a), 3825(b), 3825(c); 1927, c. 223; 1931, c. 145, s. 38; 1933, c. 172, s. 17.)

Article 6A.

Municipal Corporations Operating Toll Roads.

§ **136-89.1. Who may file petition with Municipal Board of Control for organization of corporation.**—Any number of persons not less than ten (10) are hereby authorized and empowered to file a petition with the Municipal Board of Control created by § 160-195, for the organization and creation of a municipal corporation for the purpose of acquiring rights of way, owning and operating a toll road or highway in the State. (1949, c. 1024, s. 1.)

§ 136-89.2. Presentation of petition to secretary of Board of Control; contents of petition; order for and notice of hearing.—The petition shall be presented to the secretary of the Municipal Board of Control and shall set forth the name by which the municipal corporation is to be known and shall describe in a general way the location of the proposed highway or toll road which is to be constructed or acquired, and by giving the names of the owners of the lands over which the said toll road or highway is to be constructed. The said petition shall describe in general terms the nature of the highway to be constructed and the width of the right of way which is desired to be acquired, which shall not exceed a width of one hundred (100) feet.

The secretary of said Board shall thereupon make an order prescribing the time and place for the hearing of said petition before the Municipal Board of Control. Notice of hearing shall be published once a week for four weeks in a newspaper published in or having a circulation in the county or counties where such toll road or highway is to be constructed, giving notice of the proposal to organize a municipal corporation for such purpose. Such notice is to be signed by the secretary of said Board. (1949, c. 1024, s. 2.)

§ 136-89.3. Procedure on hearing; order creating municipal corporation; recordation of papers relating to organization; fees; amendments to charter.—Any person in any manner interested in the laying out and construction of the said toll road or highway may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the Municipal Board of Control, and no formal answer to the petition need be filed. The Board may adjourn the hearing from time to time in its discretion. The Municipal Board of Control shall determine whether or not the laying out, construction and operation of the toll road is in the public interest and whether all the requirements of this article have been substantially complied with and, if the Municipal Board of Control shall so find, it shall enter an order creating a municipal corporation and fixing the name of the same, giving it the name proposed in the petition unless, for good cause, it finds that some other name should be provided.

All papers in reference to the organization of such municipal corporation shall be filed and recorded in the office of the Secretary of State, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which such municipal corporation shall operate. The fees shall be the same as now provided for organization of a private non-stock corporation and shall be paid out of the funds of such municipality.

Upon the approval of the Municipal Board of Control and the recording of the papers, as above provided, the organization shall become a municipal corporation with such powers and functions as are prescribed in this article.

After the organization of such municipal corporation, the commissioners of said municipal corporation may amend, change or add to their charter by filing a petition with the Municipal Board of Control, setting out therein the purpose of the amendment, the changes in, additions to, or the altered location of the proposed highway or toll road which is to be constructed or acquired, and the additional rights, powers or privileges necessary for the construction, acquisition and operation of the project. The petition shall be presented to the secretary of the Municipal Board of Control who shall thereupon make an order prescribing a time and place for the hearing of said petition before the Municipal Board of Control. Notice of hearing shall be published in the same manner as provided for the original petition for the formation of said municipal corporation, except that advertisement of such hearing may be waived by the Municipal Board of Control, if, in their opinion, the desired changes, alterations or additions to the charter of the municipal corporation do not affect the public interest. Amendment in this manner may be had to accomplish a change in the location of the proposed highway or toll road, an extension or addition thereto, the construction of a feeder road or bridge having a direct relationship to the original objective of the formation of the municipal corporation, or any other accomplishment deemed expedient or necessary by the commissioners of the municipal corporation. (1949, c. 1024, s. 3; 1951, c. 993, s. 1.)

Editor's Note. — The 1951 amendment added the last paragraph.

§ 136-89.4. Election of board of commissioners; term of office; vacancy appointments.—Within ninety (90) days after the organization of such municipal corporation, the petitioners for the same shall meet at the courthouse of the county in which the said toll road or highway or some part thereof is located and elect a board of not less than three (3) nor more than seven (7) commissioners which shall act as the governing board of said municipal corporation. Notice of the time and place of such meeting may be given by any three (3) of the petitioners, and such board of commissioners, when elected, shall serve for a term of six (6) years from the date of their election or until their successors are duly elected and qualified. The successors to such board of commissioners shall be elected by the commissioners before their term of office expires, and any vacancy in the membership thereof shall be filled by the remaining members of the said commission. (1949, c. 1024, s. 4.)

§ 136-89.5. President and secretary of board; seal.—The board of commissioners of said municipal corporation shall elect a president and secretary thereof and adopt a common seal, said officers to serve for a term of six years or until their successors are duly elected and qualified. Any vacancies occurring in such offices shall be filled by the appointment of the board of commissioners for the unexpired term of the one creating such vacancy. (1949, c. 1024, s. 5.)

§ 136-89.6. Powers and duties of corporation generally.—The said municipal corporation, when organized, shall have the following powers:

1. (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt a corporate seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name;

(e) To construct, maintain, repair and operate the toll road, toll bridge or turnpike at such location within the North Carolina counties of Carteret, Currituck, Dare, Hyde, and Tyrrell as shall be adopted by the municipal corporation;

(f) To issue turnpike revenue bonds of the municipal corporation, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds;

(g) To fix and revise, from time to time, and charge and collect tolls for transit over the turnpike constructed by it, without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article;

(h) To establish rules and regulations for the use of the turnpike;

(i) To purchase, solely from funds provided under this article, such lands, buildings, structures, rights of way, franchises, easements and interest in lands necessary for the construction, operation or protection of the toll road or turnpike, upon such terms and at such prices as may be considered by the municipal corporation to be reasonable and can be agreed upon between it and the owner thereof;

(j) To designate the locations of and establish, limit and control such points of ingress to and egress from the turnpike as may be necessary or desirable in the judgment of the municipal corporation to insure the proper operation and maintenance of the turnpike; and to prohibit entrance to the turnpike from any point or points not so designated;

(k) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(l) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment; to fix their compensation; and to promote and discharge such employees and agents;

(m) To accept loans and grants of money or materials or property, at any time, from the United States of America or the State of North Carolina or any agency or instrumentality thereof, or any person, firm or corporation, upon such terms and conditions as the lender or grantor may impose;

(n) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article;

(o) To enter upon any lands, waters and premises in the State through its authorized agents and employees for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall such an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The municipal corporation shall make reimbursement for any actual damages resulting to such lands, waters and premises as the result of such activities;

(p) To include as a part of the cost of any project undertaken under the authority of this article, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the corporation for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, or on land through and across which a right of way has been granted, conditioned on the removing of buildings thereon and the relocation thereof, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the commission, for a period not exceeding one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation.

2. Trust Agreement.—In the discretion of the municipal corporation any bonds issued under the provisions of this article may be secured by a trust agreement by and between the municipal corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company, within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign tolls or other revenues to which the municipal corporation's right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of such bonds, but shall not convey or mortgage the toll road or turnpike or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipal corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike, the rates of tolls and revenues to be charged, the payment, security or redemption of bonds, and the custody, safeguarding and application of all moneys, and provisions for the em-

ployment of consulting engineers in connection with the construction or operation of the toll road or turnpike. It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the municipal corporation. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual rights of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such provisions as the municipal corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operation of the turnpike.

Any pledge of tolls or other revenues or other moneys made by the municipal corporation shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the municipal corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof, or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind, in tort, contract or otherwise, against the municipal corporation, irrespective of whether such parties have notice thereof.

2½. Upon the completion of any project authorized under the terms of this article, the municipal corporation shall file with the chairman of the North Carolina State Highway and Public Works Commission a report prepared by a certified public accountant, showing all items which were included in the original cost of the project, the schedule of salaries, wages, and operating expenses budgeted for the project, and shall at periodic intervals thereafter, at least once in every year, file an operating statement for the project as prepared by the auditors or accountants of the municipal corporation.

3. Revenues.—The municipal corporation is hereby authorized to fix, revise, charge and collect tolls for the use of the turnpike and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of all or any part thereof, including the right of way adjoining the paved portion for placing thereon telephone, telegraph, electric light or power lines, provided that a sufficient number of gas stations shall be authorized to be established in each service area along any such turnpike to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted as to carry out and perform the terms and provisions of any contract with or for the benefit of bondholders. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The use and disposition of tolls and revenues shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same.

4. The authority of the municipal corporation to construct a toll road or turnpike shall not be limited to the construction of a roadway or highway but shall include the authority to construct a toll road across any body of water, navigable or nonnavigable, within the counties of Carteret, Currituck, Dare, Hyde and Tyrrell, and the State of North Carolina expressly consents to the construction of such toll road or bridge over and across waters within its jurisdiction when the charter of said municipal corporation provides for such construction.

5. The municipal corporation is hereby authorized to make and enter into a contract or agreement with any other municipal corporation, authority, person, firm or corporation, either within or without the State, containing one or more of the following described provisions:

(a) A provision whereby the municipal corporation shall agree to construct the toll road or turnpike described in its charter, or any amendment thereto, and to maintain and operate it until all revenue bonds issued by the other contracting party to finance the acquisition and construction of any toll road or turnpike joining or connecting with the toll road or turnpike proposed to be constructed by said municipal corporation shall have been paid, or until a sufficient amount for their payment shall have been set aside in trust for the benefit of the holders of said revenue bonds of the other contracting party;

(b) Provisions whereby the municipal corporation and the other contracting party shall agree to act as agent, each for the other, in the collection of tolls for vehicular traffic using both the toll road or turnpike constructed by the municipal corporation and the toll road or turnpike constructed by the other contracting party;

(c) Provisions under which tolls collected by either the municipal corporation or the other contracting party for traffic over either the toll road, turnpike or bridge constructed by the municipal corporation or the toll road, turnpike or bridge constructed by the other contracting party shall be apportioned between the municipal corporation and the other contracting party on the basis of their respective costs of construction, operation, maintenance and debt service, or on any other equitable basis; and

(d) Such other provisions as may be reasonable and proper and not in violation of law to assure the construction, maintenance and operation of the toll road, turnpike or bridge constructed by the municipal corporation and the toll road, turnpike or bridge constructed by the other contracting party, and the payment of the revenue bonds issued to finance said construction. (1949, c. 1024, s. 6; 1951, c. 993, s. 2.)

Editor's Note. — The 1951 amendment rewrote this section.

Quoted in Penn v. Carolina Virginia Coastal Corp., 231 N. C. 481, 57 S. E. (2d) 817 (1950).

§ **136-89.7. Power of eminent domain.**—In the event the said municipal corporation is unable to agree with the owner of the land across whose land a toll road or highway is to be constructed as to the acquisition of the right of way across such land for the use and operation of the said toll road, the said municipal corporation shall have the right to acquire such easement and right of way by eminent domain upon compliance with the provisions of the Public Works Eminent Domain Law, set forth in article 3 of chapter 40, of the General Statutes, provided, that the said right of way shall not exceed one hundred (100) feet in width, or such right of way may be condemned in accordance with the provisions of article 2 of chapter 40 of the General Statutes of North Carolina. (1949, c. 1024, s. 7.)

Quoted in Penn v. Carolina Virginia Coastal Corp., 231 N. C. 481, 57 S. E. (2d) 817 (1950).

§ **136-89.8. Operation of corporation for public benefit.**—Said corporation, when created, shall be operated entirely for the benefit of the public, and no person shall receive any profits whatever from the operation thereof, except that the officers and employees of said corporation shall be paid by the governing board thereof reasonable compensation for services rendered. (1949, c. 1024, s. 8.)

§ **136-89.9. Issuance of revenue bonds.**—In order to defray the costs of the acquisition of right of way and the construction of the said toll road or highway and structures which are placed thereon, the said municipal corporation is hereby authorized and empowered to issue revenue bonds, in accordance with the provisions of Revenue Bonds Act of 1938, as set forth in article 34 of chapter 160 of the General Statutes, and § 160-423 shall not be applicable as to any bonds issued by such municipality, and the same may be issued at any time thereafter as may be determined by the governing board thereof. (1949, c. 1024, s. 9.)

§ **136-89.10. Bonds, notes and property exempt from taxation.**—All of said bonds and notes and coupons shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on said bonds and notes shall not be subject to taxation as for income, nor shall said bonds or notes or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation. All the property of the said corporation shall be exempt from all taxation. (1949, c. 1024, s. 10.)

§ **136-89.11. Acquisition of toll road or highway by State Highway and Public Works Commission.**—In the event the State Highway and Public Works Commission shall at any time hereafter determine to acquire any toll road or highway which may be constructed by a municipal corporation organized under the provisions of this article, for the purpose of operating the same as a part of the State highway system, the State Highway and Public Works Commission shall have a right to acquire the same and to enter into an agreement with the municipal corporation created under the provisions of this article for the acquisition of such road or highway, and all rights of such municipal corporation therein, upon the condition that the State Highway and Public Works Commission shall pay or assume all of the outstanding obligations of such municipal corporation, including any outstanding bonds, incurred or issued in the acquisition of rights of way and construction of such improvements and, upon such contract being entered into, all of the right, title and interest of such municipal corporation created hereunder to such toll road or highway shall cease and determine and the same shall become a part of the State highway system, and such road or highway may be operated as a toll road or otherwise, as the State Highway and Public Works Commission may determine. (1949, c. 1024, s. 11.)

ARTICLE 6B.

Turnpikes.

§ **136-89.12. Turnpike projects.**—In order to provide for the construction of modern express highways or superhighways embodying safety devices, including center division, ample shoulder widths, longsight distances, multiple lanes in each direction and grade separation at intersections with other highways and railroads, and thereby facilitate vehicular traffic, provide better connections between the highway system of North Carolina and the highway systems of the adjoining states, remove many of the present handicaps and hazards on the congested highways in the State, and promote the agricultural and industrial development of the State, the North Carolina Turnpike Authority (hereinafter created) is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of the Authority, payable solely from revenues, to finance such projects. (1951, c. 894, s. 1.)

§ **136-89.13. Credit of State not pledged.**—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but all such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under the provisions of this article. (1951, c. 894, s. 2.)

§ **136-89.14. North Carolina Turnpike Authority.** — There is hereby created a body politic and corporate to be known as the "North Carolina Turnpike Authority". The Authority is hereby constituted a public instrumentality, and the exercise by the Authority of the powers conferred by this article in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

The North Carolina Turnpike Authority shall consist of five members, including the chairman of the State Highway and Public Works Commission who shall be a member ex officio, and four members appointed by the Governor who shall serve for terms expiring on July 1, 1952, July 1, 1953, July 1, 1954, and July 1, 1955, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each of the four appointed members shall be appointed for a term of four years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

The Authority shall elect one of the appointed members as chairman of the Authority and another as vice-chairman, and shall also elect a secretary-treasurer who need not be a member of the Authority. The chairman, vice-chairman and secretary-treasurer shall serve as such officers at the pleasure of the Authority. Three members of the Authority shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this article, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars ($25,000.00) and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars ($50,000.00), each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State.

The chairman of the Authority shall receive the sum of fifteen dollars ($15.00) for each day or part thereof of service, but not exceeding three thousand dollars ($3,000.00) in any one year. The other appointed members of the Authority shall receive the sum of ten dollars ($10.00) for each day or part thereof of service, but not exceeding two thousand dollars ($2,000.00) in any one year. The chairman of the State Highway and Public Works Commission shall serve as a member of the Authority without extra compensation for such service. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. (1951, c. 894, s. 3.)

§ **136-89.15. Definitions.** — As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "Authority" shall mean the North Carolina Turnpike Authority, created by § 136-89.14, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Authority shall be given by law.

(b) The word "project" or the words "turnpike project" shall mean any highway, express highway or superhighway, toll road or toll bridge constructed under the provisions of this article by the authority, including all other bridges, tunnels, overpasses, underpasses, interchanges, entrance places, approaches, toll houses, service stations, and administration, storage and other buildings, and facilities which the Authority may deem necessary for the operation of such project, and may mean any toll bridge and approaches thereto constructed and financed as a separate project, together with all property, rights, easements, and interests which may be acquired by the Authority for the construction or the operation of such project.

(c) The word "cost" as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation of expense hereafter incurred by the State Highway and Public Works Commission with the approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.

(d) The words "public highways" shall include all public highways, roads and streets in the State, whether maintained by the State or by any county, city, town or other political subdivision.

(e) The word "bonds" or the words "turnpike revenue bonds" shall mean revenue bonds of the Authority authorized under the provisions of this article.

(f) The word "owner" shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article. (1951, c. 894, s. 4.)

§ **136-89.16. General grant of powers.** — The authority is hereby authorized and empowered:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, plead and be impleaded;

(e) To construct, maintain, repair and operate turnpike projects at such locations within the State as may be determined by the Authority and approved by the State Highway and Public Works Commission; provided, further, that no turnpike or toll road shall be constructed or operated in this State unless and until a certificate of approval be first obtained from the State Highway Commission certifying that the operation of such toll road or turnpike will not be harmful or injurious to the secondary or primary roads embraced in the system of State highways;

(f) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this article;

(g) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;

(h) To establish rules and regulations for the use of any such turnpike project;

(i) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(j) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(k) To make and enter into contracts and operating agreements with similar organizations or agencies of other states and to make and enter into all other contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(l) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(m) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(n) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1951, c. 894, s. 5.)

§ **136-89.17. Acquisition of property.**—The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the State, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. The amount and size of any lands, property, rights of way, easements and other property to be obtained by the Authority under its exercise of the power of eminent domain shall first be determined and approved by the State Highway and Public Works Commission. Any such proceedings shall be conducted, and the compensation to be paid shall be ascertained and paid, in the manner provided by the laws of the State then applicable which relate to condemnation or the exercise of the power of eminent domain as provided in chapter 40 of the General Statutes and amendments thereof. Title to any property acquired by the Authority shall be taken in the name of the State. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the State or the Authority except as may be paid from the funds provided under the authority of this article.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right of way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right of way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 30 days to approve the plans and specifications so submitted, the matter shall be submitted to the North Carolina Utilities Commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the North Carolina Utilities Commission as the case may be. A copy of the plans and specifications approved by the railroad or the North Carolina Utilities Commission shall be filed as an exhibit with the petition for condemnation.

Whenever it shall be found necessary to cross any electric power or telephone or telegraph lines, any powers of condemnation or eminent domain may be exercised only to acquire an easement thereover without any unnecessary interference with the continued use and operation of such lines. The Authority shall pay any and all costs which may be necessary to make such crossings reasonably safe and usable. If the Authority and the owner of such power, telephone or telegraph lines are unable to agree upon the terms and conditions as to the payment of damages and costs involved in such matters, and the way and manner in which such crossings shall be made, this shall be determined by the North Carolina Utilities Commission upon petition filed by the Authority and after notice and hearing as to the other utilities concerned, in accordance with such rules and procedures as may be prescribed by the said Commission. Before using such easement as may be acquired by the Authority as herein provided it shall fully comply with such agreement as shall be made by it with any such utility or fully comply with any conditions set forth in the order of condemnation. In the event any land which is used for agricultural purposes is condemned for the location thereon of any highway under the provisions of this article which would divide one part of such agricultural land from another part thereof, the Authority shall pay all the damages to such land caused from the taking of such part thereof as shall be used for such highway and in addition thereto the damages resulting from dividing such agricultural land so that one part thereof will not be accessible to the other. If the owner of such land shall be dissatisfied with the amount of damages assessed to be paid for the taking of such property, he shall have a right to demand that the value of the whole tract of agricultural land, including woodland used as a part thereof, shall be valued and the Authority shall be required to pay in lieu of damages for condemnation of such highway thereunder the total value of such property upon conveyance of the same in fee simple, free from encumbrances, to the Authority. The owner of such property shall, however, have the option at any time to accept the damages assessed for the taking of the land or the total valuation of said property as hereinbefore provided. (1951, c. 894, s. 6.)

§ **136-89.18. Incidental powers.** — The Authority shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of such project; provided where any part of an existing public road is vacated, no charge may be made for the use of such vacated public road where the same becomes a part of a turnpike project.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities.

The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Authority shall determine that it is necessary that any such public utility facility which now is, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

The State hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any turnpike project; provided no public property may be used except upon the approval of the State Highway and Public Works Commission, and with the consent of the Governor and the Council of State acting together. (1951, c. 894, s. 7.)

§ **136-89.19. Turnpike revenue bonds.**—The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the official seal of the Authority shall be impressed thereon and attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Authority may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1951, c, 894, s. 8.)

§ **136-89.20. Trust agreement.**—In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project or projects in connection with such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project or projects. (1951, c. 894, s. 9.)

§ **136-89.21. Revenues.** — The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use; provided that a sufficient number of gasoline stations should be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted in respect to the aggregate of tolls from the turnpike project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such turnpike project or projects and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the turnpike project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other money so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1951, c. 894, s. 10.)

§ **136-89.22. Trust funds.**—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide. (1951, c. 894, s. 11.)

§ **136-89.23. Remedies.** — Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls. (1951, c. 894, s. 12.)

§ **136-89.24. Exemption from taxation.** — The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State, except inheritance and gift taxes. (1951, c. 894, s. 13.)

§ **136-89.25. Miscellaneous.**—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Authority may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this article.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth a complete operating and financial statement covering its operation during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than one year, or both. (1951, c. 894, s. 14.)

§ **136-89.26. Turnpike revenue refunding bonds.**—The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of any additional turnpike project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1951, c. 894, s. 15.)

§ **136-89.27. Transfer to State.**—When all bonds issued under the provisions of this article in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair, shall become part of the State highway system and shall thereafter be maintained by the State Highway and Public Works Commission free of tolls; provided, however, that the Authority may thereafter charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another turnpike project or projects, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment. (1951, c. 894, s. 16.)

§ **136-89.28. Preliminary expenses.** — To provide for the preliminary expenses of the Authority in carrying out the provisions of this article the Governor and the Council of State acting together, with the approval of the State Highway Commission, is authorized and empowered to advance and make available to the Authority in either the current or the next succeeding biennium from the Highway Fund an amount not exceeding twenty-five thousand dollars ($25,000). Such advance shall not be made unless at the time it is made the Governor and Council of State, and the State Highway and Public Works Commission shall have reasonable grounds for believing that the construction of a toll road by the Authority in this State is desirable and practical and will serve the public interest. All such expenses incurred by the Authority prior to the issuance of turnpike revenue bonds under the provisions of this article shall be paid by the Authority from such appropriation and charged to the appropriate turnpike project or projects, and the Authority shall keep proper records and accounts showing each amount so charged. Upon the sale of turnpike revenue bonds for any turnpike project or projects, the funds so expended by the Authority in connection with such project or projects shall be reimbursed to the Highway Fund from the proceeds of such bonds.

The Authority is hereby authorized and directed when such appropriation is made available to it to make such surveys and studies of any proposed turnpike project as may be necessary to effect the financing authorized by this article at the earliest practicable time, and for this purpose to employ such consulting engineers, traffic engineers, legal and financial experts and such other employees and agents as it may deem necessary. To effect the purpose of this article the State Highway and Public Works Commission shall make available to the Authority all data in its possession and furnish such engineering services as may be possible which may be useful to the Authority in making such surveys and studies and the Commission may furnish such assistance in making investigations and in preparing designs for any turnpike project as may be agreed upon between the Commission and the Authority, the cost of such surveys and expenses incurred by the Commission to be paid by the Authority. (1951, c. 894, s. 17.)

§ **136-89.29. Additional method.**—The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1951, c. 894, s. 18.)

§ **136-89.30. Article liberally construed.**—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 894, s. 19.)

ARTICLE 7.

Miscellaneous Provisions.

§ **136-90. Obstructing highways and roads misdemeanor.**—If any person shall willfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right of way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court. (1872-3, c. 189, s. 6; 1883, c. 383; Code, s. 2065; Rev., s. 3784; C. S., s. 3789.)

Requisites for Indictment and Conviction. — An indictment for obstructing a neighborhood road leading to a church, which follows the words of this section, will be sustained—still, to warrant a conviction, it is essential, in the absence of proof of an actual dedication, or of a laying out by public authority under § 136-71 to show a user for twenty years, and it must have been worked and kept in order by public authority. State v. Lucas, 124 N. C. 804, 32 S. E. 553 (1899).

A special verdict, rendered on a trial for obstructing a road, is also defective in that it does not find that the user of the road by the public was as of right and adversary. State v. Stewart, 91 N. C. 566 (1884).

Placing Nails in Highway. — Placing nails in the highway in order to puncture automobile tires is an obstruction within this section. State v. Malpass, 189 N. C. 349, 127 S. E. 248 (1925).

Preventing Construction of Drainage Ditch.—Where a person obstructs an overseer in cutting a ditch across his land to drain a public road, he is not guilty of obstructing justice, there being no provision of law for taking private property for this purpose and the payment of just compensation therefor. State v. New, 130 N. C. 731, 41 S. E. 1033 (1902).

Obstruction a Nuisance.—Unlawful obstruction of a highway is a public nuisance. Brooks v. Henrietta Mills, 182 N. C. 719, 110 S. E. 96 (1921).

Highway Unknowingly Obstructed. — When a mill company gratuitously maintained a ball ground on its premises for its employees, without direction or supervision, it is manifest that the relation of licensor and licensee without pecuniary compensation existed between them, and it is not liable for an injury caused by obstruction of an adjoining highway by a rope intended to exclude spectators who did not pay for admission, there being no evidence that it had actual or implied knowledge thereof. Brooks v. Henrietta Mills, 182 N. C. 719, 110 S. E. 96 (1921).

Damages Allowed Also.—Damages are allowable for the obstruction of a highway. Tate v. Seaboard Air Line R. Co., 168 N. C. 523, 84 S. E. 808 (1915).

Obstruction of Permissive Cartway.—A way over the lands of another as an outlet to and from the lands of the one claiming it, cannot be established by permissive user, but by possession adverse to the true owner; and a way of this character which has not been established by the public authorities or used and kept up by the public for a sufficient length of time does not fall within the meaning of this section so as to make its obstruction punishable. State v. Norris, 174 N. C. 808, 93 S. E. 950 (1917).

Private Easement. — A reservation by deed to the grantor of a restricted easement across the lands conveyed, without defining or locating it, and which has not since been located, the grantor and his family going across the lands conveyed whenever they choose, is sufficient proof of a public road so as to sustain an indictment under this section. State v. Haynie, 169 N. C. 277, 84 S. E. 385 (1915).

Private Roadway.—In a prosecution for unlawfully and willfully obstructing a public cartway, in the absence of evidence of dedication to the public, or evidence of an adverse continuous user by the prosecuting witness for the period required by law to give him an easement, defendant could not be guilty where the obstruction was on the part of the road where it crossed his land. State v. Lance, 175 N. C. 773, 94 S. E. 721 (1917).

Maximum Penalty Constitutional.—Where a defendant is convicted of obstructing a highway and of wanton injury to personal property by the same act, it is not in violation of our Constitution nor otherwise improper to sentence him to the maximum penalty for each offense. State v. Malpass, 189 N. C. 349, 127 S. E. 248 (1925).

Law Shortening Statute of Limitation.—A public-local law which shortens the period for the running of the statute of limitations to a time already expired and depriving the owner of lands of his right to stop the public user of a private right of way thereover, and declares the right of way a public one, is unconstitutional in taking the property of the owner without due process of law and in denying him the equal protection of the laws. State v. Haynie, 169 N. C. 277, 84 S. E. 385 (1915).

§ **136-91. Placing glass, etc., or injurious obstructions in road.**—No person shall throw, place or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any of the public highways of this State. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1917, c. 140, ss. 18, 21; C. S., ss. 2599, 2619.)

§ **136-92. Obstructing highway drains, misdemeanor.** — Any person who shall obstruct any drains along or leading from any public road in the State shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. (1917, c. 253; C. S., s. 3791.)

§ **136-93. Openings, structures, pipes, trees, and issuance of permits.**—No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the State Highway and Public Works Commission in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the State Highway and Public Works Commission or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the State Highway and Public Works Commission in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Commission or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Commission or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done: The Commission, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Commission or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law. (1921, c. 2, s. 13; 1923, c. 160, s. 2; C. S., s. 3846(u); 1933, c. 172, s. 17; 1943, c. 410.)

Editor's Note. — The 1943 amendment inserted in the first and second sentences the words "not maintained by the State Highway and Public Works Commission."

§ **136-94. Gates projecting over rights of way forbidden.**—It shall be unlawful for any person, firm or corporation to erect, maintain or operate upon his own land, or the land of another, any farm gate or other gate which, when opened, will project over the right of way of any State highway.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1927, c. 130.)

§ 136-95. Water must be diverted from public road by ditch or drain.—When any ditch or drain is cut in such a way as to turn water into any public road, the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road. (Code, s. 2036; Rev., s. 2697; C. S., s. 3790.)

§ 136-96. Road or street not used within 20 years after dedication deemed abandoned; declaration of withdrawal recorded; defunct corporations.—Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by any deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within twenty years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, unless such right shall have been asserted within two years from and after March 8, 1921: Provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece, or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid: Provided further, that where any corporation has dedicated any strip, piece, or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title, or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest to said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms, or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out hereinbefore in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway prior to March 8, 1921. This section shall be in force from and after March 8, 1921, and shall apply to dedications made after as well as before that date. (1921, c. 174; C. S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406.)

Editor's Note. — The 1939 amendment added the second proviso in the first paragraph. For comment on the amendment, see 17 N. C. Law Rev. 371.

This Section Is Constitutional. — The right of those purchasing lots in a subdivision with reference to a plat to assert easements in the streets shown by the plat is dependent upon the doctrine of equitable estoppel, and providing for the termination of their easements by revocation of the dedication when they have failed to assert same within two years from the effective date of the statute, affords them a reasonable time in which to assert their rights, and therefore does not deprive them thereof without due process of law. Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Section Not Applicable Where Road Is Way of Necessity.—Where the jury found that continued use of the street was necessary to afford convenient ingress, egress and regress to the lot owned by plaintiffs the provisions of this section that a street not used within 20 years after dedication shall be deemed abandoned were not applicable. Evans v. Horne, 226 N. C. 581, 39 S. E. (2d) 612 (1946), following Home Real Estate Loan, etc., Co. v. Carolina

Beach, 216 N. C. 778, 7 S. E. (2d) 13 (1940), and distinguishing Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Where land was dedicated for street and highway purposes and such street or highway is necessary to afford convenient ingress and egress to any parcel of land sold and conveyed by the dedicator of such street or highway prior to March 8, 1921, the dedication may not be withdrawn under the provisions of this section. Russell v. Coggin, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

Owners Are Only Parties Entitled to Withdraw Streets from Dedication. — Where individual owners of lands subdivide and sell same by block and lot number with reference to a plat showing streets therein, they retain the fee in the streets subject to the easement thus dedicated to the public in general and to the private owners of adjacent lots in particular, and are the only parties entitled to withdraw the streets from dedication when the streets have not been used for twenty years subsequent to such dedication and are not necessary for ingress and egress to any of the lots sold. Russell v. Coggin, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

The only instance in which the adjacent owners of lots in a subdivision may be deemed to own any right, title or interest in a dedicated street, except an easement therein, is where the street was dedicated by a corporation which has become nonexistent. Russell v. Coggin, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

Effect of Withdrawal before Acceptance. —The prospective dedication of streets, parks, etc., in the sale of a development of lands is not binding upon a city until acceptance, and neither the city nor the general public can acquire any rights thereunder against the owner of the land or purchasers from him where the offer of dedication has been withdrawn before acceptance, under the provisions of this section. Irwin v. Charlotte, 193 N. C. 109, 136 S. E. 368 (1927).

Withdrawal in Conformity with Section Terminates Easement. — Where land impliedly dedicated has not been actually opened or used for twenty years, and no person has asserted public or private easement thereon within the period fixed by this section or at any other time, and the land is not necessary for ingress, egress or regress to lots sold, effect is given by this section to the filing of a declaration of withdrawal of the land from dedication on the part of those holding under the original owner, and the dedication of the land is conclusively presumed to have been abandoned, and no claim of easement public or private may thereafter be enforced. Foster v. Atwater, 226 N. C. 472, 38 S. E. (2d) 316 (1946).

The streets in question were dedicated to the public more than twenty years prior to the institution of this action by the sale of lots in a subdivision with reference to a plat showing the streets. The streets were never actually opened or used at any time, and no person asserted any public or private easement therein within two years from the passage of this article, or at any other time. The streets in question are not necessary to afford convenient ingress or egress to any other lots in the subdivision. The corporation making the dedication no longer exists. Plaintiffs, claimants under dedicator, filed and recorded a declaration withdrawing said streets from the dedication. It was held that the revocation of the dedication terminated the easement of the public and of the purchasers of lots in the subdivision, and therefore plaintiffs own the fee in the said land and can convey same free of the easements. Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Use by Public Prevents Withdrawal. — The dedication of a street may not be withdrawn, if the dedication has been accepted and the street or any part of it is actually opened and used by the public. Russell v. Coggin, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

Where a street in a subdivision is dedicated to the purchasers of lots and to the public by the sale of lots with reference to a plat of the subdivision showing the street, and the street is actually opened and used by the public even for a part of the width shown by the plat, such use precludes the owner from revoking the dedication under this section, even as to the portion of the width of the street not used and maintained by the municipality. Home Real Estate Loan, etc., Co. v. Carolina Beach, 216 N. C. 778, 7 S. E. (2d) 13 (1940).

Declaration of Withdrawal Must Be Filed. — When certain streets and alleys have been dedicated to the public by the registration of a plat, it is necessary to a withdrawal of the dedication under this section, among other requirements, that the declaration of such withdrawal should be recorded; and when the facts agreed in an action involving the validity of an alleged withdrawal fail to disclose whether the declaration of the withdrawal had been recorded and to show plaintiffs to be claimants of title under dedicators who filed the plats, they are insufficient to enable the court to determine the question. Sheets v. Walsh, 215 N. C. 711, 2 S. E. (2d) 861 (1939).

Burden of Proof and Admissibility of Evidence.—In an action for damages for trespass and to enjoin further trespass upon an easement claimed by plaintiffs by dedication, the burden is on plaintiffs to establish the property right asserted, and defendants are entitled to introduce the record of withdrawal of dedication executed pursuant to this section as a release or extinguishment by estoppel of record from sources to which plaintiffs were a privy, notwithstanding the absence of allegation in their answer of such withdrawal from dedication. Pritchard v. Fields, 228 N. C. 441, 45 S. E. (2d) 575 (1947).

§ 136-97. Responsibility of counties for upkeep, etc., terminated; liability of Commission for damage on State highway system. — The board of county commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the State Highway and Public Works Commission. The State Highway and Public Works Commission as a Commission and the individual members thereof, shall not be liable for any damage sustained by any person, firm, or corporation on the State highway system, except for wanton and corrupt negligence. (1921, c. 2, s. 50; C. S., s. 3846(dd); 1933, c. 172, s. 17.)

Failure to Remove Obstruction after Notice. — In an action to recover for injuries sustained when the car in which plaintiffs were riding struck a limb lying on a dirt highway, it was shown that defendant was a divisional engineer of the State Highway and Public Works Commission, that the highway in question was embraced within his division, that defendant was given notice that the limb was lying across the highway and that the accident occurred some six hours after such notice. It was held that defendant's motion to nonsuit was properly allowed, since, if defendant's failure to remove the limb was a breach of an official or governmental duty involving the exercise of discretion, there was neither allegation nor evidence of corruption or malice, and if such duty was a ministerial duty it was of a public nature imposed entirely for the public benefit, and there was neither allegation nor proof that this section provided for personal liability. Wilkins v. Burton, 220 N. C. 13, 16 S. E. (2d) 406 (1941).

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.—From and after the first day of July, one thousand nine hundred and thirty-one, no county or road district by authority of any public, public-local, or private act, shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July first, one thousand nine hundred and thirty-one. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July first, one thousand nine hundred and thirty-one, shall be taken over by the State Highway and Public Works Commission and completed by the Commission by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto. (1931, c. 145, s. 35.)

§ 136-99. Sale of camp sites and other real estate and application of proceeds.—Any county, road and/or highway district which owns a camp site or other real estate built or purchased with road or highway funds, may sell and convey such camp site or real estate, and the money so received therefrom shall be used to retire any bonds issued for road or highway purposes, or interest due thereon. If there are no outstanding bonds, the money received shall be turned over to the general county fund. (1931, c. 232, s. 2.)

§ 136-100. Application of insurance funds collected on burned buildings. — In event any building or buildings erected or constructed with road or highway funds shall be damaged or destroyed by fire and the same were insured, the insurance when collected shall be used to retire any outstanding bonds issued for road purposes and interest thereon, and if there are no outstanding bonds the money shall be turned over to the general county fund: Provided, that said fund received from insurance may be used to rebuild, repair and equip any jail or other building used to house prisoners. (1931, c. 232, s. 4.)

§ 136-101. Use of funds to retire current liabilities and deficits.—In lieu of paying the moneys received as herein set out on bonds and interest, if there are any current liabilities or current deficits, the money may be used for discharging such current liabilities and deficits. (1931, c. 232, s. 5.)

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.—1. It shall be unlawful for any person, firm, or corporation to construct or maintain outside the limits of any city or town in this State any billboard larger than six square feet at or nearer than two hundred feet to the point where any walk or drive from any school, church, or public institution located along any highway enters such highway except under the following conditions:

(a) Such billboard is attached to the side of a building or buildings which are or may be erected within two hundred feet of any such walk or drive and the attachment thereto causes no additional obstruction of view.

(b) A building or other structure is located so as to obstruct the view between such walk or drive and such billboard.

(c) Such billboard is located on the opposite side of the highway from the entrance to said walk or drive.

2. Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a misdemeanor and punished by a fine of ten dollars ($10.00), and each day that such violation continues shall be considered a separate offense. (1947, c. 304, ss. 1, 2.)

Article 8.

Citation to Highway Bond Acts.

I. State of North Carolina Highway Serial Bonds. Public Laws 1921, c. 2, s. 39; Public Laws Ex. Sess. 1921, c. 74; Public Laws 1923, c. 263, s. 3; Public Laws 1925, c. 45, s. 4; Public Laws 1925, c. 133.

II. State of North Carolina Highway Serial Bonds. Public Laws 1925, c. 35.

III. Chowan Bridge Bonds. Public Laws 1925, c. 74; Public Laws 1927, cc. 176 and 183; Public Laws 1929, cc. 128 and 144; Public Laws 1935, c. 15, s. 1.

IV. The Highway Bond Act of 1927. Public Laws 1927, c. 95; 1929, c. 312.

V. Cape Fear River Bridge Bonds. Public Laws 1927, c. 41; Public Laws 1929, cc. 127, 144; Public Laws 1931, c. 90; 1935, c. 17.

VI. For acts which authorized the issuance of county, township, and district road bonds, and bonds for state-line bridges, having no prospective operation after 1931 in view of Public Laws 1931, c. 145, s. 35, see chapter 70 of the Consolidated Statutes, as amended.

VII. The Highway Bond Act of 1943. Session Laws 1943, c. 322.

VIII. The Secondary Road Bond Act of 1949. Session Laws 1949, cc. 1250, 1255.

Cross Reference.—For list of bond acts generally, see chapter 142, art. 6.

Chapter 137.

Rural Rehabilitation.

Article 1.

State Rural Rehabilitation Law.

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Article 2.

North Carolina Rural Rehabilitation Corporation.

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Article 1.

State Rural Rehabilitation Law.

§ **137-1. Title of article.**—This article shall be known as the "State Rural Rehabilitation Law." (1935, c. 459, s. 1.)

§ **137-2. Declaration of necessity for subsistence homesteads; agencies established to effect purpose.**—It is hereby declared that it is necessary in the public interest to make provision for the establishment of small individual farms or subsistence homesteads with the necessary dwellings and other structures in planned rural communities, together with livestock, farm implements, equipment and initial materials and supplies to enable success of the applicant and his family, and that the providing of such subsistence homesteads or farm homes and operating facilities in community settlements, being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land (not classed as sub-marginal lands) the construction of new agricultural facilities, the clearing, grading, draining of lands, and building of planned rural communities under public supervision in accord with proper standards of sanitation and safety at a cost which will permit their use or sale at prices which families of low income and/or families of agricultural experience or ability can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the State of North Carolina and/or the agencies and instrumentalities of the United States government when and if designated by it as such, for the purpose of attaining the ends herein recited and their necessity in the public interest. (1935, c. 459, s. 2.)

§ **137-3. State Board of Rural Rehabilitation created; appointment and terms of members; vacancies; compensation.**—There is hereby created a State Board of Rural Rehabilitation of the State of North Carolina, which will consist of three (3) members, to be appointed by the Governor. Two of the three members shall be appointed for two years, and one for four years, and at the expiration of these terms their successors shall be appointed for a term of four years. All vacancies which may occur for any unexpired term shall be filled by the Governor. The members of the Board shall receive no salary, but shall be entitled to a per diem of not in excess of $10.00 when attending meetings of the Corporation and the necessary traveling and other expenses incurred in the discharge of their duties, which shall be paid by the Corporation. (1935, c. 459, s. 3.)

§ **137-4. Officers and employees.** — The members of the Board shall choose from among their number a chairman, and the Board may appoint such other officers and employees, including a secretary, as it may require, for the performance of its duties, and shall fix and determine their qualifications, duties and salaries. (1935, c. 459, s. 4.)

§ **137-5. Submission to Board of projects; community corporations; supervision of Board over monies of such corporations; naming of trustee; duties; disbursement of funds.**—No rural community project proposed by a corporation incorporated under this article shall be undertaken without the approval of the Board.

(a) There shall be submitted to the Board a community plan and financial plan in such forms and with such assurances as the Board may prescribe to raise the actual cost of the lands and projected improvements and operating facilities by subscriptions to or the sale of the stock, income debentures, and/or mortgage bonds of such corporation. Whenever reference is made in this article to cost of projects or of buildings and improvements in projects, such cost shall include the necessary personal property in farm units and community buildings, charges for financing and supervision approved by the Board, and carrying charges during construction required in the project, including interest on borrowed and, where approved by the Board, on invested capital.

(b) The corporation agrees to accept a designee of the Board of Rural Rehabilitation as a member of the board of directors of said corporation, which designee may be a representative of the United States or of the principal creditor of said corporation.

(c) If required by the Board, the corporation shall deposit all monies received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the State of North Carolina and to perform trust functions, and such trustee shall receive such monies and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements and the personal property and supervision necessary for successful independent farm units and rural community centers, upon presentation of draft, check, or order signed by a proper officer of the corporation and, if required by the Board, countersigned by the said Board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the Board for payment in full thereof shall be paid to the corporation. (1935, c. 459, s. 5.)

§ **137-6. Investigation into affairs of corporations; judicial powers.**—The Board shall have power to investigate into the affairs of limited dividend and/or non-dividend companies incorporated under this article, and into the dealings, transactions, or relationships of such companies with other persons. Any of the investigations provided for in this article may be conducted by the Board or by a committee to be appointed by the Board consisting of one or more members of the Board. Each member of the Board or a committee thereof shall have power to administer oaths, take affidavits, and to make personal inspections of all places to which their duties relate. The Board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this article, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the Board or excused from attendance. (1935, c. 459, s. 6.)

§ **137-7. Study of rural conditions; programs for betterment; dissemination of information; approval of community projects; co-operation with local officials.** — The Board is hereby empowered to (a) study rural conditions and farm tenancy throughout the State, to determine in what areas unhealthful and insanitary conditions constitute a menace to health, and reasonable comfort of the citizens of the State; (b) prepare programs for correcting such conditions as may be relieved by the purposes of this article; (c) collect and distribute information relating to rural development; (d) recommend and approve the areas within which or adjacent to which the construction of rural community projects by limited dividend and/or non-dividend companies may be undertaken, and (e) co-operate with local officials and planning commissions or similar bodies in the development of projects they may have under consideration. (1935, c. 459, s. 7.)

§ **137-8. Consolidation of projects.**—The Board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project, or the consolidation of any approved project with a proposed project. In any of these events the consolidation project shall be treated as an original project and an application shall be submitted as in the case of an original project, and sale prices may be averaged throughout the consolidated or extended project. The Board may by approval of its charter likewise permit any limited dividend and/or non-dividend corporation to organize and operate one or more rural community projects which may be organized and operated independently of each other under such bylaws, rules and regulations authorized by the Board, not inconsistent with the provisions of this article, as may be necessary for the proper conduct of the affairs of the corporation. (1935, c. 459, s. 8.)

§ **137-9. Other powers of Board.** — In pursuance of its power and authority to supervise and regulate the operations of limited dividend and/or non-dividend companies incorporated under this article the Board may in its discretion:

(a) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the Board, or by the terms of any project approved by the Board for protection of its security holders or creditors, or to refrain from doing any acts in violation thereof.

(b) Examine all such corporations and keep informed as to their general condition, their capitalization, and the manner in which their property is constructed, operated, or managed and sold.

(c) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus, and devices of any such corporation, examine all books, contracts, records, documents, and papers of any such corporation, and by subpoena duces tecum compel the production thereof.

(d) In its discretion prescribe uniform methods and forms of keeping accounts, records, and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged, or credited.

(e) Require every such corporation to file with the Board an annual report setting forth such information as the Board may require, verified by the oath of the president and general manager or receiver, if any, thereof, or by the person required to file the same. Such report shall be in the form, cover the period, and be filed at the time prescribed by the Board.

(f) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article. (1935, c. 459, s. 9.)

§ **137-10. Price fixing for farms sold; determination of payments made by corporations; dividends; sinking funds.**—The Board shall fix the maximum and minimum purchase price to be charged for the farms sold by such corporation. Such minimum purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as herein prescribed, and such purchase prices shall be subject to revision by the Board from time to time. The payments to be made by such corporation shall be (a) all fixed charges and all operating and maintenance charges and expenses, which shall include taxes, assessments, insurance, amortization charges in amounts approved by the Board to amortize the mortgage indebtedness in whole or in part, depreciation charge, if, when, and to the extent deemed necessary by the Board; reserves, sinking funds, and corporate expenses essential to operation and management of the project in amounts approved by the Board. (b) A dividend, if any, not exceeding all the maximum fixed by this article upon the stock of the corporation allotted to the project by the Board. (c) Where feasible, in the discretion of the Board, a sinking fund in an amount to be fixed by the Board for the gradual retirement of the stock and income debentures of the corporation to the extent permitted by this article, or specified in the issues outstanding. (1935, c. 459, s. 10.)

§ **137-11. Reorganization of corporations.** — (1) Reorganization of limited dividend and/or non-dividend companies incorporated under this article shall be subject to the supervision and control of the Board and no such reorganization shall be had without its authorization.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness, shall be such as is authorized by the Board, which, in making its determination, shall not exceed the fair value of the property involved. (1935, c. 459, s. 11.)

§ **137-12. Power of Board to enjoin illegal acts of corporations.** — Whenever the Board shall be of opinion that any such limited dividend and/or non-dividend company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the Board, and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the Board, or which is improvident or prejudicial to the interests of the public, the lien holders or the stockholders, it may commence an action or proceeding in the superior court of the county in which the said company is located, in the name of the Board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The Board shall begin such action or proceeding by a petition and complaint to the said superior court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding thirty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint, or in such modified or other form as the court may determine will afford appropriate relief. (1935, c. 459, s. 12.)

Cross Reference.—As to injunctions generally, see § 1-485 et seq.

§ **137-13. Acquisition by corporations of property for projects; power of eminent domain.**—When the Board shall have approved a project for the construction or establishment of a rural community or communities presented it by a limited dividend and/or non-dividend company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest, or purchase, or, in the case of limited dividend and/or non-dividend companies engaged in the construction and development of rural communities, by the exercise of the power of eminent domain under and pursuant to the law providing for the appropriation or condemnation of private property by corporations with specific authorization by the Board to be in the public interest and necessary for the public use. (1935, c. 459, s. 13.)

§ **137-14. Application for charter.**—Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging, and filing in the office of the Secretary of State articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the State, except as herein modified or changed. (1935, c. 459, s. 14.)

Cross Reference.—As to information required in certificate of incorporation for corporations generally, see § 55-2.

§ **137-15. Purposes of incorporation enumerated.**—The purposes for which a limited dividend and/or non-dividend rural development company is to be formed shall be as follows: To acquire, construct, maintain, and operate housing projects, subsistence homesteads and organized rural rehabilitation or community projects, and to establish, loan, make loans for, and to assist in the establishment of small individual farms and farm homes, together with the necessary buildings and other structures, livestock, equipment, implements and machinery, materials, supplies, facilities, medical, social and educational centers, co-operative enterprises and commercial establishments essential to the growth and development of said rural rehabilitation or community projects, when authorized by and subject to the supervision of the Board of Rural Rehabilitation. (1935, c. 459, s. 14.)

§ **137-16. Preference to applicants possessing certain qualifications.**—Preference shall be given to applicants who are married or who have dependent families, have good moral character, and are experienced in farming and familiar with farm operations, or who are or recently were farmers, farm tenants, share croppers, or farm laborers, or to good families of small incomes who will contribute to social advantages of the community, and each of whom may be approved by designated representatives of the Federal and State Agricultural Extension Service. (1935, c. 459, s. 14.)

§ **137-17. Capital stock.** — The capital stock may consist of one or more classes, the shares of which shall have a par value. (1935, c. 459, s. 14.)

§ **137-18. Declaration as to serving a public purpose; restriction on income from stock; disposition of surplus.**—Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose, and that it shall remain at all times subject to the supervision and control of the Board or of other appropriate State authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and satisfactory social and agricultural conditions, subject to the provision of the State Rural Rehabilitation Law; and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at a rate not in excess of six per centum per annum, and that any surplus in excess of such amount, if said company shall be dissolved, shall revert to the State of North Carolina, or to such federal department or agency that may have provided the funds for establishing a rural community as herein contemplated. (1935, c. 459, s. 14.)

§ **137-19. Power to borrow money and issue bonds secured by mortgage; amortization.**—Any company formed under this article may, subject to the approval of the Board, borrow funds and secure the repayment thereof by bonds and mortgages, or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second or junior lien upon the real property embraced in any project or projects. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the Board, including the right to assignment of rents and entry into possession in case of default; but the operation of the rural community projects in the event of such entry by mortgagee or receiver shall be subject to the regulation of the Board under this article. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the Board, and the amortization period shall begin three years after the farm family or families are established on the land and continue semiannually up to a limit of forty years. (1935, c. 459, s. 14.)

§ **137-20. Application of general corporation laws.**—The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend and/or non-dividend rural rehabilitation companies, except where such provisions are in conflict therewith. (1935, c. 459, s. 14.)

Cross Reference. — For provisions of general corporation act, see § 55-1 et seq.

§ **137-21. Dividends on stock restricted.**—No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per centum per annum, except that when in any preceding year, dividends of the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years. (1935, c. 459, s. 15.)

§ **137-22. Issuance of stock and bonds regulated.**—No limited dividend and/or non-dividend company incorporated under this article shall issue stock, bonds, or income debentures except for money, services, or property actually received for the use and lawful purpose of the corporation. No stock, bonds, or income debentures shall be issued for property or services except upon a valuation approved by the Board of Rural Rehabilitation and such valuation shall be used in computing actual or estimated cost. (1935, c. 459, s. 16.)

§ **137-23. Exchange of stock and bonds for income debenture certificates.**—The articles of incorporation may authorize the issuance of income debenture certificate bearing no greater interest than five per centum per annum. After the incorporation of a limited dividend rural rehabilitation company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the Board of Rural Rehabilitation for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor. (1935, c. 459, s. 17.)

§ **137-24. Restrictions on corporations.**—No limited dividend nor non-dividend company incorporated under this article shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the Board a certificate that such acquisition is necessary or convenient for the public purposes defined in this article.

(2) Sell, transfer, assign, or lease any real or personal property without first having obtained the consent of the Board: Provided, however, that leases and/or sales conforming to the regulations and rules of the Board and for actual occupancy by the lessees and/or purchasers may be made without the further consent of the Board. Any conveyance, incumbrance, lease or sub-lease made in violation of the provisions of this section, and any transfer or assignment thereof, shall be void.

(3) Charge or accept any rental, purchase price, or other charge in excess of the amounts prescribed by the Board, except for the insurance of mortgage loans as provided under the Federal Housing Act.

(4) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per centum per annum.

(5) Issue its stock, debentures and bonds covering any project or projects undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the Board and interest and other carrying charges during construction and the necessary supervision of the project or projects thereafter.

(6) Mortgage any real property or issue any securities or evidences of indebtedness without first having obtained the approval of the Board.

(7) Enter into contracts for the construction of rural community projects or for the payments of salaries to officers or employees except subject to the inspection and revision of the Board and under such regulations as the Board from time to time may prescribe.

(8) Voluntarily dissolve without first having obtained the consent of the Board.

(9) Make any guaranty without the approval of the Board. (1935, c. 459, s. 18.)

§ 137-25. Earnings transferable to surplus; distribution upon dissolution; surplus paid into general fund of State.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b), and (c) of § 137-10 shall be subject to the approval of the Board. The amount of such surplus shall not exceed fifteen per centum of the outstanding capital stock and/or income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend and/or non-dividend company the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued, and unpaid dividends or interest thereon less any payment or distributions theretofore made other than by dividends provided in § 137-21, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the State of North Carolina, or shall be disposed of in such other manner as the Board may direct and the Governor may approve. (1935, c. 459, s. 19.)

§ 137-26. Foreclosure actions; foreclosure or other judicial sale; unrestricted rights of mortgagees.—(1) In any foreclosure action the Board shall be a party defendant; and such Board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the Board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding the court shall be authorized to make an order increasing the sale price to be charged for the farms, etc., in the project involved in such foreclosure, or appoint a receiver of the property, or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend and/or non-dividend corporation organized under this article, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this article.

(2) Notwithstanding the foregoing provisions of this section, wherever it shall appear that a corporation, subject to the supervision either of the State Insurance Department or State Banking Department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage, which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the State of North Carolina, free from any restrictions contained in this section, except that the Board shall be made a party defendant and that such Board shall take all steps necessary to protect the interests of the public, and no costs shall be awarded against it. (1935, c. 459, s. 20.)

§ 137-27. Application to Board for one corporation to purchase prop-

erty of another.—Before any limited dividend or non-dividend corporation incorporated under this article shall purchase the property of any other limited dividend or non-dividend corporation, it shall file an application with the Board in the manner hereinbefore provided as for a new project, and shall obtain the consent of the Board to the purchase and agree to be bound by the provisions of this article, and the Board shall not give its consent unless it is shown to the satisfaction of the Board that the project is one that can be successfully operated according to the provisions of this article. (1935, c. 459, s. 21.)

§ **137-28. Notice to Board required before execution of judgment against corporation.**—In the event of a judgment against a limited dividend or non-dividend corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the Board. Upon receipt of such notice the Board shall take such steps as in its judgment may be necessary to protect the rights of all parties. (1935, c. 459, s. 22.)

§ **137-29. Fees for examination of plans and supervision of construction and for other purposes; State not liable for Board expenses.**—The Board may charge and collect from a limited dividend or non-dividend corporation, incorporated under this article, reasonable fees in accordance with rates to be established by the rules of the Board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-quarter of one per cent of the cost of the project; for the holding of a public hearing upon application of a limited dividend or non-dividend corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a limited dividend or non-dividend corporation; and for any act done by the Board, or any of its employees, in performance of their duties under this article an amount reasonably calculated to meet the expense of the Board incurred in connection therewith. In no event shall any part of the expenses of the Board ever be paid out of the State treasury. The Board may authorize a limited dividend or non-dividend corporation to include such fees as part of the cost of a project, or as part of the charges specified in § 137-10, pursuant to rules to be established by the Board. (1935, c. 459, s. 23.)

§ **137-30. Corporate existence limited; extension.** — The corporate existence of any corporation authorized hereunder shall not extend beyond sixty years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless general corporation laws, by approval of the State Board of Rural Rehabilitation should grant an extension for an additional period of time. (1935, c. 459, s. 25.)

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ **137-31. Designated a State agency.** — The North Carolina Rural Rehabilitation Corporation, a non-profit corporation, organized by the members of the commission of the North Carolina Emergency Relief Administration, and chartered by the State to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families by enabling them to secure subsistence and gainful employment from the soil and co-ordinated and other enterprises in order to restore them as self-sustaining citizens and thereby reduce the burden of public relief for the needy and unemployed, is hereby recognized and designated as an agency of the State of North Carolina and of the North Carolina Emergency Relief Administration and its successor within the powers and limitations of its charter for the carrying out of said objects and purposes. (1935, c. 314, s. 1.)

§ **137-32. Powers of Corporation.**—The Corporation is hereby authorized to accept and receive loans, grants and other assistance from the United States government, departments and/or agencies thereof for its use or for relief and rehabilitation purposes as well as to receive like financial and other aid when extended by the State of North Carolina or any of its departments, political subdivisions or agencies or any municipality, or from other sources, either public or private, and to employ the same in carrying out its rehabilitation purposes and activities; to utilize such means and agencies as shall be found useful or necessary to carry out the purposes of this article and which will facilitate the securing of co-operation and financial assistance from the government of the United States, its departments or agencies, in aid thereof. (1935, c. 314, s. 2.)

§ **137-33. Co-operation by State officers, boards, etc.**—The various officers, boards, courts and governing bodies of the State engaged in any way in the relief of destitution and unemployment are hereby authorized to co-operate with the North Carolina Rural Rehabilitation Corporation for the purposes specified in § 137-31. (1935, c. 314, s. 3.)

§ **137-34. Fund for loans to county boards of education for erecting or equipping vocational buildings, etc.**—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of three hundred twenty-five thousand dollars ($325,000.00) to be used, together with any net income accruing thereon, for loans, to be made in the manner hereinafter set forth, to county boards of education for the purpose of erecting or equipping vocational buildings for teaching agriculture and home economics. (1939, c. 241, s. 1; 1941, c. 307, s. 1.)

Editor's Note. — The 1941 amendment inserted the word "net" before "income".

§ **137-35. Loans to be made through State Board of Education.**—The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(a) As applications for loans are made, the Director of Schoolhouse Planning and the Director of Vocational Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(b) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(c) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(d) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(e) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(f) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(g) Said loans will be repayable in ten (10) equal annual installments and will bear interest at four per cent per annum, payable annually, semiannually, or quarterly, as the State Board of Education shall determine.

(h) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2.)

§ **137-36. Approval of applications from county boards by State Board of Education.**—The State Board of Education is hereby empowered to receive and approve applications from county boards of education for such vocational agricultural and home economics buildings or equipment loans in the same manner and on the same forms as it now receives applications for loans from the State Literary Fund, and in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 3.)

§ **137-37. Loans from State Literary Fund.**—As an alternative method of making loans to county boards of education for the purpose of erecting or equipping such vocational agricultural and home economics buildings, the State Board of Education is hereby empowered to make loans for said purposes from the State Literary Fund and to sell or transfer, without recourse, the notes received for said loans (together with the security therefor) to North Carolina Rural Rehabilitation Corporation. Loans so made from the State Literary Fund for such vocational agricultural and home economics buildings shall be made in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 4.)

§ **137-38. County boards of education authorized to borrow funds.**—County boards of education are hereby empowered to borrow through or from the State Board of Education amounts necessary for constructing or equipping vocational agricultural and home economics buildings to the same extent and in the same manner as they are now authorized by law to borrow from the State Literary Fund by the provisions of §§ 115-220 to 115-224, and by other applicable provisions of law. (1939, c. 241, s. 5.)

§ **137-39. Creation of fund for loans to students of rural social science authorized.**—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of twenty-five thousand dollars ($25,000.00) to be used, together with any net income accruing thereon, for loans to students engaged in the study of rural social science; and the directors of North Carolina Rural Rehabilitation Corporation are hereby authorized to make such regulations relative to said loans as to the said board of directors may seem advisable. (1939, c. 241, s. 6; 1941, c. 307, s. 2.)

Editor's Note. — The 1941 amendment inserted the words "together with any net income accruing thereon."

§ **137-40:** Repealed by Session Laws 1951, c. 155, s. 3.

§ **137-41. Transfers of real and personal assets to Farm Security Administration in trust, etc., ratified.**—There is hereby ratified the act of North Carolina Rural Rehabilitation Corporation and its board of directors in transferring to the Farm Security Administration of the United States Department of Agriculture all of its real and personal assets of every kind and description (except the funds hereinabove referred to and except sums necessary for or incident to making the transfer to Farm Security Administration), in trust until the twentieth day of May, one thousand nine hundred and fifty, to use said property for certain purposes of the North Carolina Rural Rehabilitation Corporation selected and designated by the board of directors of said Corporation, and in trust thereafter to repay or redeliver to North Carolina Rural Rehabilitation Corporation any unused or unexpended portions of said property. (1939, c. 241, s. 8.)

§ **137-42. Agreements as to retransfer and future use of assets.**—The North Carolina Rural Rehabilitation Corporation is hereby authorized and empowered to enter into all such contracts and agreements with the United States of America, acting by and through the Secretary of Agriculture or other appropriate officials of the United States government, as may be necessary or appropriate to accomplish the retransfer to the North Carolina Rural Rehabilitation Corporation of the funds and assets of said Corporation now held by the Secretary of Agriculture pursuant to the agreement of transfer between the North Carolina Rural Rehabilitation Corporation and the United States of America, bearing date of May 20, 1938. Said Corporation is further authorized and empowered to enter into such covenants and agreements with the Secretary of Agriculture or other appropriate officials of the United States government in regard to the future use of said returned assets or in any other regard as may be required by Public Law 499, 81st Congress, approved May 3, 1950, or by the Secretary of Agriculture acting pursuant thereto. (1951, c. 155, s. 1.)

§ **137-43. Agreements for transfer of assets to Secretary of Agriculture for rural rehabilitation purposes.**—The North Carolina Rural Rehabilitation Corporation is further authorized and empowered to enter into such agreements with the Secretary of Agriculture or other appropriate officials of the United States government, and upon such terms and conditions and for such periods of time as may be mutually agreeable, for the transfer by the Corporation to the Secretary of Agriculture of all or any part of its assets for use in the State of North Carolina in carrying out the purpose of titles I and II of the Bankhead-Jones Farm Tenant Act as now or hereafter amended by the Congress of the United States and for such other rural rehabilitation purposes within the State of North Carolina as said Corporation may deem advisable. (1951, c. 155, s. 2.)

Chapter 138.

Salaries and Fees.

Sec.
138-1. Annual salaries payable monthly.
138-2. Payment of fees; when to be paid in advance.
138-3. Compensation limited to that fixed by law.
138-4. Governor to fix salaries of administrative officers.

§ **138-1. Annual salaries payable monthly.**—All annual salaries shall be paid monthly. (Code, s. 3731; 1893, c. 54; Rev., s. 2772; C. S., s. 3847; 1925, c. 230; 1929, c. 100.)

§ **138-2. Payment of fees; when to be paid in advance.**—All public officers shall receive the fees prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers, and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the State, or of a county, for the benefit of the State or county, the fees need not be paid in advance; but if for the State, shall be paid by the State, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance. (Code, ss. 1173, 3758; Rev., s. 2804; C. S., s. 3849.)

Cross References.—As to fees in criminal cases not being demandable in advance, see § 6-6. As to summary judgment for official fees, see § 6-2. As to liability of defendant in criminal actions for costs, see §§ 6-45 through 6-48. As to liability of prosecutor for costs, see § 6-49 et seq. As to constitutional provision, see Art. IV, § 18.

Officers of Court Must Demand Fees.—Officers of the courts are not compelled to perform their duties, unless the fees prescribed by law are paid or tendered them, but they must demand them before laches can be imputed to the litigants. West v. Reynolds, 94 N. C. 333 (1886).

Same — When Demand Not Made. — The officer is not "compelled to perform" the required service, but he may perform it, and dispense with the payment, and if he does not so intend, he should say so at the time, and not presume that the posting of the notice in his office, of an inflexible rule that he had adopted and from which he would not under any circumstances depart would be known to every one. West v. Reynolds, 94 N. C. 333 (1886).

Effect of Unconditional Pardon. — Fees due officers of the court are vested rights by law, and are not discharged when the defendant receives an unconditional pardon, after conviction and sentence, from the Governor of the State. State v. Mooney, 74 N. C. 98 (1876).

When Pardon Discharges Defendant from Costs. — In State v. Underwood, 64 N. C. 599 (1870), it was held that where the pardon is pleaded after verdict and before judgment, it will discharge the defendant from the costs. State v. Mooney, 74 N. C. 98 (1876).

Supreme Court Clerk's Fee for Docketing Case. — The appellant's undertaking does not cover the fee of the clerk of the Supreme Court in docketing the case, and the clerk is in the exercise of his right in refusing to docket the transcript where he has demanded the prescribed fee in advance and its payment has been refused. Dunn v. Clerk's Office, 176 N. C. 50, 96 S. E. 738 (1918).

Right of Clerk of Superior Court.—The clerk had the right, even under the common law, as he has under the statute, to demand his fees in advance. Clerk v. Wagoner, 26 N. C. 131 (1843); Martin v. Chesteen, 75 N. C. 96 (1876); Andrews v. Whisnant, 83 N. C. 446 (1880); West v. Reynolds, 94 N. C. 333 (1886); Long v. Walker, 105 N. C. 90, 10 S. E. 858 (1890); Ballard v. Gay, 108 N. C. 544, 13 S. E. 207 (1891).

Same—In Criminal Actions. — In criminal actions, the clerk of the superior court cannot require that the costs of transcript upon appeal shall be paid in advance, although the defendant did not appeal in forma pauperis, and a certiorari will issue directing the clerk to send up the transcript which he holds for such prepayment. State v. Nash, 109 N. C. 822, 13 S. E. 733 (1891).

Same—Section 1-305.—This section and § 1-305 providing that clerks shall issue execution on all judgments rendered in their respective courts, within six weeks of the rendition thereof, or be amerced in the sum of one hundred dollars, must be construed together, it follows that clerks of the superior court will not incur the penalty prescribed in § 1-305 unless the plaintiff pays or tenders him his fees for that service. Bank v. Bobbitt, 111 N. C. 194, 16 S. E. 169 (1892).

Register May Refuse to Function.—The register has the right to refuse to treat a mortgage as delivered to him for registration until his fees in that respect have been paid. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Legislative Power.—The legislature may reduce or increase the salaries of such officers as are not protected by the Constitution, during their term of office. Cotten v. Ellis, 52 N. C. 545 (1860).

Taxation of Salary.—But the State cannot tax the salary of a State officer whose office is created by the Constitution. Purnell v. Page, 133 N. C. 125, 45 S. E. 534 (1903). And this applies to the salaries of judges. Const. Art. IV, § 18, and notes thereto.

Improperly Collected Fee Subject to Recovery.—Where a person is compelled to pay a public officer fees which he had no right to claim, in order to induce him to do his duty such fees may be recovered back. Robinson v. Ezzell, 72 N. C. 231 (1875).

§ **138-3. Compensation limited to that fixed by law.**—No officer or employee of the State shall receive any compensation other than the salaries fixed by law, except as provided by way of fees or by special appropriation or from any departmental fund. (1907, c. 830, s. 1; 1907, c. 994, s. 1; C. S., s. 3850; 1925, c. 128, s. 1.)

§ **138-4. Governor to fix salaries of administrative officers.**—The salaries of administrative officers whose salaries are now fixed by statute shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission, such salaries to be payable in equal monthly installments. (1947, c. 898.)

Chapter 139.

Soil Conservation Districts.

Sec.
139-1. Title of chapter.
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139-3. Definitions.
139-4. State Soil Conservation Committee.
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139-6. Election and duties of county supervisors; county chairman to be ex officio district supervisor.
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Sec.
139-9. Adoption of land-use regulations.
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139-11. Nonobservance of prescribed reglations; performance of work under the regulations by the supervisors.
139-12. Co-operation between districts.
139-13. Discontinuance of districts.
139-14. Dividing large districts.
139-15. "County committeeman" construed to mean "county supervisor"; powers and duties.

§ **139-1. Title of chapter.**—This chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

§ **139-2. Legislative determinations, and declaration of policy.**—It is hereby declared, as a matter of legislative determination:

A. The Condition.—The farm, forest and grazing lands of the state of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the topsoil is being blown and washed out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The Consequences.—The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, drainage developments, farming, and grazing.

C. The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; farm drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments; manurial materials, and fertilizers for the correction of soil deficiencies and/or to promote increased growth of soil-protecting crops; retardation of run-off by increasing the absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy.—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State. (1937, c. 393, s. 2; 1947, c. 131, s. 1.)

Editor's Note. — The 1947 amendment inserted the words "farm drainage" near the middle of subsection C.

§ **139-3. Definitions.**—Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

(3) "Committee" or "State Soil Conservation Committee" means the agency created in § 139-4.

(4) "Petition" means a petition filed under the provisions of subsection A of § 139-5 for the creation of a district.

(5) "Nominating petition" means a petition filed under the provisions of § 139-6 to nominate candidates for the office of supervisor of a soil conservation district.

(6) "State" means the State of North Carolina.

(7) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.

(8) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall have contracted to purchase any lands lying within a district organized under the provisions of this chapter.

(11) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.

(12) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than ten days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. (1937, c. 393, s. 3; 1947, c. 131, s. 2.)

Editor's Note. — The 1947 amendment rewrote subsection (12).

§ **139-4. State Soil Conservation Committee.**—A. There is hereby established to serve as an agency of the State and to perform the functions conferred upon it in this chapter, the State Soil Conservation Committee which shall be composed of the following members. The following shall serve, ex officio, as members of the Committee: the director of the State Agricultural Extension Service, the director of the State Agricultural Experiment Station, and the State Forester. Three members shall consist each year of the president, first vice-president and the immediate past president of the State Association of Soil Conservation District Supervisors. The Committee shall invite the Secretary of the United States Department of Agriculture to appoint some resident of North Carolina to serve as a member of the Committee. The Committee, in cooperation with the North Carolina State College of Agriculture and Engineering in the State, shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

B. The State Soil Conservation Committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Committee may call upon the Attorney General of the State for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the State government, and shall be furnished with the necessary supplies and equipment. Upon request of the Committee, for the purpose of carrying out any of its functions, the supervising officer of any State agency, or of any State institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the Committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the Committee may request.

C. The Committee shall designate its chairman, and may, from time to time, change such designation. A member of the Committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the Committee. A majority of the Committee shall constitute a quorum, and the concurrence of a majority of the Committee in any matter within their duties shall be required for its determination. Every member of the State Committee who does not receive a salary from an agency of the State or federal government, shall receive a per diem of five dollars ($5.00) while engaged in the discharge of the duties of the Committee, and all members of the State Committee shall be entitled to their necessary expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of the Committee. The Committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the State Soil Conservation Committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.

(3) To co-ordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. (1937, c. 393, s. 4; 1947, c. 131, s. 3.)

Editor's Note. — The 1947 amendment rewrote subsection A and the fourth sentence of subsection C.

§ 139-5. Creation of soil conservation districts.—A. Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil Conservation Committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the State Soil Conservation Committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the Committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil Conservation Committee may consolidate all or any such petitions.

B. Within thirty days after such a petition has been filed with the State Soil Conservation Committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Committee shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in § 139-2. The territory to be included within such boundaries need not be contiguous. If the Committee shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the Committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the Committee in the determination of such administrative practicability and feasibility, it shall be the duty of the Committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of ...., ... and ...." and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of .... and ...." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Committee. All occupiers of land lying within the boundaries of the territory, as determined by the State Soil Conservation Committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The Committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The Committee shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in § 139-2: Provided, however, that the Committee shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the Committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in §§ 139-6 and 139-7. Such districts shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the State Soil Conservation Committee pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the Committee has appointed them as supervisors; (2) the name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office; (3) the name which is proposed for the district; and (4) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil Conservation Committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Committee.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil Conservation Committee, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil Conservation Committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

G. After six months shall have expired from the date of entry of a determination by the State Soil Conservation Committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

H. Petitions for including additional territory within an existing district may be filed with the State Soil Conservation Committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by two-thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4.)

Editor's Note. — The 1947 amendment rewrote the first two paragraphs of subsection F.

§ **139-6. Election and duties of county supervisors; county chairman to be ex officio district supervisor.**—After issuance by the Secretary of State of the certificate of organization of the soil conservation district, nominating petitions may be filed with the State Soil Conservation Committee not less than ten nor more than sixty days preceding the first day of election week as provided in this section, to nominate candidates for a soil conservation committee in each county of the district, to be composed of three members. Any qualified voter may sign as many nominating petitions as there are vacancies on the county committee to be filled, but no nominating petition shall be accepted by the Committee unless it shall be subscribed by twenty-five or more qualified voters of such county.

An election to elect a member or members of a county committee shall be held annually during the week of December in which the first Tuesday after the first Monday falls, and the polls shall be open each weekday of that week from six-thirty o'clock a. m. to six-thirty o'clock p. m., Eastern Standard Time.

At the first election held pursuant to this chapter, as amended, the candidate receiving the largest vote shall be elected for a term of three years, the candidate receiving the next largest number of votes shall be elected for a term of two years and the candidate receiving the third largest number of votes shall be elected for a term of one year. The names of all nominees on behalf of whom such petitions have been signed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference in said first election. All qualified voters residing within the county shall be eligible to vote in such election. The three candidates who shall receive the largest number of the votes cast in such election shall be elected members of the soil conservation committee for the county. Their successors shall be elected for a term of three years. All members of the county committee elected pursuant to this chapter shall take office on the first Monday in January following their election.

The State Committee shall pay all of the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such an election and the determination of the eligibility of voters therein, and shall publish the results thereof.

A county committee shall select from its members a chairman, a vice-chairman, and a secretary. The chairman will be ex officio a member of the soil conservation district board of supervisors; the vice-chairman will be first alternate district supervisor; and the secretary will be second alternate district supervisor.

It shall be the duty of members of a county soil conservation committee (1) to be responsible for the securing of nominating petitions for the election of the county committee, providing for elections, reporting the results thereof to the district supervisors, who, in turn, shall report the results to the State Committee, all to be done under the supervision of the State Committee; (2) to work in close harmony with the district supervisors of their district in the performance by the district supervisors of their duties set out in paragraphs (1), (2), and (6) of § 139-8; (3) to further develop annual county goals and plans for reaching these goals for soil conservation work in their county; and (4) to request agencies whose duties are such as to render assistance in soil and water conservation to set forth in writing or memorandum what assistance they may have available in the county and report such to the district supervisors. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1.)

Editor's Note. — The 1947 amendment rewrote this section, and the 1949 amendment rewrote the caption.

§ **139-7. Appointment, qualifications and tenure of supervisors.**—The governing body of any district shall consist of the chairman of the county committees of the counties within the district, together with such additional supervisor or supervisors as may be appointed by the State Committee pursuant to this paragraph, except that when a district is composed of only one county, the members of the county committee shall be members of the board of supervisors of the district which such county comprises. When a district is comprised of less than four counties, the State Committee shall appoint two residents of the district to serve as district supervisors along with the elected supervisors. When a district is comprised of four or more counties, the State Committee may, but is not required to, appoint one resident of the district to serve as a district supervisor along with the elected supervisors. Such appointive supervisors shall qualify and assume their duties at the same time as the elected supervisors and shall serve for a term of three years. When a vacancy arises with respect to an appointive supervisor, the State Committee shall fill such vacancy for the unexpired term by appointment of a resident of the district in which the vacancy occurs. Every supervisor shall hold office until his successor has been elected or appointed and qualifies. When a vacancy arises on a county committee, the vacancy shall be filled by appointment by the State Committee, of a resident of the county, to serve the remainder of the unexpired term.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil conservation districts shall receive a per diem of five dollars ($5.00) and necessary expenses for attendance upon meetings of district supervisors, provided that when a per diem and expense allowance is claimed for attendance upon any district supervisor's meetings outside the district for which such supervisor serves, the same may not be paid unless written approval is obtained from the State Committee prior to any such meeting.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the State Committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the State Soil Conservation Committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the State Soil Conservation Committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 131, ss. 6, 7.)

Editor's Note.—Prior to the 1943 amendment the supervisors received no compensation for their services. The 1947 amendment rewrote the first two paragraphs and added the last paragraph.

§ **139-8. Powers of districts and supervisors.**—A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this chapter:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing vegetation, changes in use of land, and the measures listed in subsection C of § 139-2, on lands owned or controlled by this State or any of its agencies, with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interest in such lands.

(2) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.

(4) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(7) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

(9) As a condition to the extending of any benefits under this chapter to, or

the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(10) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. (1937, c. 393, s. 8; 1939, c. 341.)

Editor's Note. — The 1939 amendment deleted an exception clause formerly contained in paragraph (7) relating to obtaining forest tree seedlings from the State forest nursery.

§ **139-9. Adoption of land-use regulations.**—The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number ...., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number ...., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two-thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.
2. Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.
3. Specifications of cropping programs and tillage practices to be observed.
4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.
5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 139-2.

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ **139-10. Enforcement of land-use regulations.**—The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of § 139-9 are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ **139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors.**—Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of § 139-9 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgment, when filed in accordance with the provisions of § 1-234, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ **139-12. Co-operation between districts.**—The supervisors of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. (1937, c. 393, s. 12.)

§ **139-13. Discontinuance of districts.**—At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five occupiers of land lying within the boundaries of such districts may file a petition with the State Soil Conservation Committee praying that the operations of the district be terminated and the existence of the district discontinued. The Committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the Committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the .... (name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in § 139-2: Provided, however, that the Committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil Conservation Committee of a certification that the Committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the State Soil Conservation Committee setting forth the determination of the Committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The State Soil Conservation Committee shall be substituted for the district or supervisors as party to such contracts. The Committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of § 139-11, nor the pendency of any action instituted under the provisions of such section, and the Committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The State Soil Conservation Committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this chapter, more often than once in five years. (1937, c. 393, s. 13.)

§ **139-14. Dividing large districts.**—Whenever the State Committee shall receive a petition from any board of district supervisors signed by all supervisors of such district, the State Committee shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in §§ 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the State Committee shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The State Committee shall assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8.)

§ **139-15. "County committeeman" construed to mean "county supervisor"; powers and duties.**—Wherever the words "county committeeman" or "county committeemen" appear in this chapter, the same shall be construed to mean "county supervisor" or "county supervisors;" and each such county committeeman or county supervisor shall receive the same compensation and have and exercise the same rights, powers, duties, responsibilities and voting privileges granted to or imposed upon district supervisors in respect to soil conservation activities under the provisions of this chapter. (1949, c. 268, s. 2.)

Chapter 140.

State Art and Symphony Societies.

Article 1.

State Art Society.

Sec.
140-1. Directors for North Carolina Art Society.
140-2. Adoption of bylaws; amendments.
140-3. Board of Public Buildings and Grounds authorized to provide space for art exhibits.
140-4. Annual audit by State Auditor.
140-5. Allocations from contingency and emergency fund; expenditures.

Article 1A.

Acquisition and Preservation of Works of Art.

140-5.1. Purpose of article.
Sec.
140-5.2. Preservation of works of art.
140-5.3. Right to receive gifts.
140-5.4. Special Fund.
140-5.5. Appropriation contingent on gifts.
140-5.6. Expenditure of funds.
140-5.7. Expense of Commission.
140-5.8. Location of art museum.

Article 2.

State Symphony Society.

140-6. Trustees for North Carolina Symphony Society.
140-7. Adoption of bylaws; amendments.
140-8. Annual audit by State Auditor.
140-9. Allocations from contingency and emergency fund; expenditures.

Article 1.

State Art Society.

§ **140-1. Directors for North Carolina Art Society.** — The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of sixteen members, of whom the Governor of the State, the Superintendent of Public Instruction, the Attorney General, and the chairman of the art committee of the North Carolina Federation of Women's Clubs shall be ex officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by the members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. Of the four directors first named by the Governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1929, c. 314, ss. 1, 2.)

§ **140-2. Adoption of bylaws; amendments.**—The said board of directors, when organized under the terms of this article, shall have authority to adopt the bylaws for the Society, and said bylaws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of directors at two consecutive regular meetings. (1929, c. 314, s. 3.)

§ **140-3. Board of Public Buildings and Grounds authorized to provide space for art exhibits.**—The Board of Public Buildings and Grounds is authorized and empowered to set apart, for the exhibition of works of art owned, donated or loaned to the North Carolina State Art Society, Incorporated, any space in any of the public buildings in the city of Raleigh which may be so used without interference with the conduct of the business of the State, and it shall be the duty of the custodians of such buildings to care for, safeguard and protect such exhibits and works of art. (1929, c. 314, s. 4.)

§ **140-4. Annual audit by State Auditor.**—It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina State Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1929, c. 314, s. 5.)

§ **140-5. Allocations from contingency and emergency fund; expendi-**

tures. — The Governor and Council of State may, in their discretion, allocate from the contingency and emergency fund, from time to time, such amounts, not exceeding two thousand dollars ($2,000.00) per annum, as may be deemed essential to supplement the revenues and income of the North Carolina State Art Society, Incorporated, in paying the necessary administrative expenses of the same. The said allocations shall be expended only upon budgets submitted to the Budget Bureau and all expenditures thereof shall be subject to the provisions of §§ 143-1 to 143-47. (1943, c. 752.)

Article 1A.

Acquisition and Preservation of Works of Art.

§ **140-5.1. Purpose of article.**—The North Carolina State Art Society is authorized and empowered to inspect, appraise, obtain attributions and evaluations, to purchase, acquire, transport, exhibit, loan and store, and to receive on consignment or as loans, statuary, paintings and other works of art of any and every kind and description which are worthy of acquisition and preservation, and to do all other things incidental to and necessary to effectuate the purposes of this article. (1947, c. 1097, s. 1.)

§ **140-5.2. Preservation of works of art.**—The North Carolina State Art Society shall be responsible for the care, custody, storage and preservation of all works of art acquired by it, or received by consignment or loan. (1947, c. 1097, s. 1.)

§ **140-5.3. Right to receive gifts.**—In order to carry out the purposes of this article, the North Carolina State Art Society is authorized to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government or from any other source, works of art or money or other property, which might be retained, sold or otherwise used to promote the purposes of the North Carolina State Art Society; provided that works of art acquired by the society under the provision of this section may not be pledged, mortgaged or sold; and provided, further, that any gifts, donations, devises, bequests, or legacies of property, other than works of art, money and bonds may be disposed of only with the approval of the Governor and Council of State. The proceeds of the sale of any property acquired under the provisions of this section shall be deposited in the State treasury to the account of the State Art Society Special Fund. (1947, c. 1097, s. 1.)

§ **140-5.4. Special Fund.**—Gifts of money to the North Carolina State Art Society, when made for the purposes of this article, shall be paid into the State treasury and maintained as a fund to be designated: State Art Society Special Fund. All gifts made to the North Carolina State Art Society shall be exempt from every form of taxation including, but not by way of limitation, ad valorem, intangible, gift, inheritance and income taxation. (1947, c. 1097, s. 1.)

§ **140-5.5. Appropriation contingent on gifts.** — There is hereby appropriated out of any unappropriated general fund surplus that may exist at June 30, 1947, the sum of one million dollars ($1,000,000.00) which appropriation shall not be made available for expenditure until funds are available to meet all appropriations made for the biennium 1947-49 and until the sum of one million dollars ($1,000,000.00) shall have been secured through gifts and paid into the State treasury to the credit of the special fund "State Art Society Special Fund." The appropriations contained herein and the receipts collected under the provisions of this article shall be subject to the provisions of the Executive Budget Act. (1947, c. 1097, s. 1.)

§ **140-5.6. Expenditure of funds.**—After the conditions set forth in §

140-5.5 shall have been complied with, the sum of one million dollars ($1,000,000.00) appropriated in § 140-5.5 and the sum of one million dollars ($1,000,000.00) in gifts paid into the State treasury for the State Art Society Special Fund, referred to in § 140-5.5, may be expended for the purposes set out in §§ 140-5.1, and 140-5.2 and for all necessary expenses incidental thereto, including actual necessary expenses and subsistence as may be incurred in travel for the purpose of inspecting prospective gifts and purchases, such expenditures to be made only by a commission of five members to be appointed by the Governor from the membership of the North Carolina State Art Society, which Commission shall be known as the "State Art Commission." The State Treasurer shall, with the approval of the Governor and Council of State, invest any unexpended moneys in the State Art Society Special Fund in securities authorized to be purchased for the sinking funds of the State of North Carolina.

Two of the members of said Commission shall be appointed for a term of one year, three members shall be appointed for a term of two years, and thereafter the term for all members of the Commission shall be two years. Any vacancy arising on the Commission shall be filled by appointment by the Governor for the unexpired portion of the term.

Before any purchases of works of art shall be made by the "State Art Commission," such purchases shall be approved by the board of directors of the executive committee of the North Carolina State Art Society and appraised by the director or chief curator of the National Gallery of Art of Washington, D. C., as to the value, fitness, desirability and other features which should be considered in connection with such purchases. Dominant emphasis shall be placed upon the acquisition of masterpieces of the American, British, French, Spanish, Flemish and Dutch Schools. No expenses shall be incurred in travel for the purpose of inspecting works of art until approved in advance by the Governor and Council of State. (1947, c. 1097, s. 1; 1951, c. 1168.)

Editor's Note. — The 1951 amendment added the third paragraph.

§ **140-5.7. Expenses of Commission.**—The members of the Commission described in § 140-5.6 shall serve without compensation, but in attending meetings of the Commission the members shall be paid such actual necessary expenses as may be incurred in travel and subsistence while attending such meetings not in excess of that allowed by the biennial appropriation act. (1947, c. 1097, s. 1.)

§ **140-5.8. Location of art museum.**—In the event of the erection of a State art museum under the provisions of this article, the same shall be erected in the city of Raleigh. (1947, c. 1097, s. 1½.)

ARTICLE 2.

State Symphony Society.

§ **140-6. Trustees for North Carolina Symphony Society.**—The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than sixteen members, of which the Governor of the State and the Superintendent of Public Instruction shall be ex officio members, and four other members shall be named by the Governor. The remaining number of trustees shall be chosen by the members of the North Carolina Symphony Society, Incorporated, in such manner and at such times as that body shall determine. Of the four members first named by the Governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1943, c. 755, ss. 1, 2; 1947, c. 1049, ss. 1-3.)

Editor's Note — The 1947 amendment substituted "trustees" for "directors." Prior to the amendment the membership of the board was limited to sixteen.

§ **140-7. Adoption of bylaws; amendments.**—The said board of trustees, when organized under the terms of this article, shall have authority to adopt bylaws for the Society and said bylaws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of trustees. (1943, c. 755, s. 3; 1947, c. 1049, s. 2.)

Editor's Note. — The 1947 amendment substituted "trustees" for "directors."

§ **140-8. Annual audit by State Auditor.**—It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina Symphony Society, Incorporated, and make a report thereof to the general Assembly at each of its regular sessions, and the said Society shall be under the patronage and the control of the State. (1943, c. 755, s. 4.)

§ **140-9. Allocations from contingency and emergency fund; expenditures.**—The Governor and Council of State are hereby authorized and empowered to allot a sum not exceeding two thousand dollars ($2,000.00) a year from the contingency and emergency fund to aid in the carrying on of the activities of the said Society. All expenditures made by the said Society shall be subject to the provisions of §§ 143-1 to 143-34. (1943, c. 755, s. 5.)

Chapter 141.

State Boundaries.

Sec.
141-1. Governor to cause boundaries to be established and protected.
141-2. Payment of expenses of establishing boundaries.
141-3. Appointment of arbitrators.
141-4. Disagreement of arbitrators reported to General Assembly.
141-5. Approval of survey.
141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.

§ 141-1. Governor to cause boundaries to be established and protected.—The Governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the State of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to rerun and re-mark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this State and any of the said states.

The Governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this State and any other state, to institute and prosecute in the name of the State of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the Attorney General or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings. (1881, c. 347, s. 1; Code, s. 2289; 1889, c. 475, s. 1; Rev., s. 5315; 1909, c. 51, s. 1; C. S., s. 7396.)

Line Between North Carolina and Tennessee. — Under the Acts of 1821 of the States of North Carolina and Tennessee confirming the boundary line between the two States "as run and marked" by the joint commission, when it is clearly shown where the line between two known points but a few miles apart was run and marked by the commission, such line must be accepted by the courts, in a suit between private persons, as the true and ancient boundary, even though it now appears that a different line between such points might more accurately conform to a general call in the act of cession for "the extreme height" of a certain mountain for a distance of 100 miles. Stevenson v. Fain, 116 F. 147 (1902).

§ 141-2. Payment of expenses of establishing boundaries.—When the line has been rerun and re-marked as above provided between this State and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the Governor is authorized to issue his warrant upon the State Treasurer for such portion of the expenses as shall fall to the share of this State. (1881, c. 347, s. 2; Code, s. 2290; 1889, c. 475, s. 2; Rev., s. 5316; C. S., s. 7397.)

§ 141-3. Appointment of arbitrators. — If any disagreement shall arise between the commissioners, the Governor of this State is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary. (1881, c. 347, s. 3; Code, s. 2291; 1889, c. 475, s. 3; Rev., s. 5317; C. S., s. 7398.)

§ 141-4. Disagreement of arbitrators reported to General Assembly.—In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the Governor to the next General Assembly for their action. (1881, c. 347, s. 4; Code, s. 2292; 1889, c. 475, s. 4; Rev., s. 5318; C. S., s. 7399.)

§ 141-5. Approval of survey.—When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the Governor, who shall lay the same before the Council of State; and when the Governor and the Council of State shall have approved the same the Governor shall issue his proclamation, declaring said lines to be the true boundary line or lines, and the same shall be the true boundary line or lines between this and the states above referred to. (1881, c. 347, s. 5; Code, s. 2293; 1889, c. 475, s. 5; Rev., s. 5319; C. S., s. 7400.)

§ 141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.—1. The Constitution of the State of North Carolina, adopted in 1868, having provided in article I, § 31, that the "limits and boundaries of the State shall be and remain as they now are," and the eastern limit and boundary of the State of North Carolina on the Atlantic seaboard having always been, since the Treaty of Peace with Great Britain in 1783 and the Declaration of Independence of July 4th, 1776, one marine league eastward from the Atlantic seashore, measured from the extreme low water mark, the eastern boundary of the State of North Carolina is hereby declared to be fixed as it has always been at one marine league eastward from the seashore of the Atlantic Ocean bordering the State of North Carolina measured from the extreme low water mark of the Atlantic Ocean seashore aforesaid.

2. The State of North Carolina shall continue as it always has to exercise jurisdiction over the territory within the littoral waters and ownership of the lands under the same within the boundaries of the State, subject only to the jurisdiction of the federal government over navigation within such territorial waters.

3. The Governor and the Attorney General are hereby directed to take all such action as may be found appropriate to defend the jurisdiction of the State over its littoral waters and the ownership of the lands beneath the same. (1947, c. 1031, ss. 1-3.)

Editor's Note. — The reference to the Constitution in the first sentence of this section evidently should read "article I, § 34" instead of "article I, § 31."

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-1. How bonds executed; interest coupons attached; where payable; minimum amount.
142-2. Title of act and year of enactment recited in bonds.
142-3. Record of bonds kept by State Treasurer.
142-4. Books for registration and transfer.
142-5. Registration as to principal.
142-6. Registration as to principal and interest.
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142-9. Duties performed by other officers.
142-10. Chief clerk may issue when Treasurer unable to act.
142-11. When bonds deemed duly executed.
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142-14. Issuance of temporary bonds.
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Article 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

142-16. Governor and Council of State may borrow on note.
142-17. Recital of facts entered in minutes; directions to Treasurer; limit of amount.
142-18. Report to General Assembly.
142-19. Power given to Director of Budget to authorize State Treasurer to borrow money.

Article 3.

Refunding Bonds.

142-20. Title of article.
142-21. Refunding bonds authorized for State.
142-22. Date and rate of interest; maturity.
142-23. Execution; interest coupons; registration; form and denomination.
142-24. Sale of bonds.
Sec.
142-25. Proceeds directed to separate fund; use limited.
142-26. State's credit and taxing power pledged.
142-27. Coupons receivable for debts due State.
142-28. Exemption from taxation.
142-29. Investment in bonds made lawful for fiduciaries.

Article 4.

Sinking Fund Commission.

142-30. Title of article.
142-31. Creation; duties.
142-32. To adopt rules; organization.
142-33. Treasurer of Commission; liability.
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142-35. Purchase of securities.
142-36. Interest of securities held as part of sinking fund.
142-37. Registration of securities; custody thereof.
142-38. Expenses of Commission.
142-39. Report of Commission.
142-40. Embezzlement by member of Commission.
142-41. False entry by secretary or treasurer.
142-42. Interest of member in securities; removal.
142-43. Report of sufficiency of sinking fund.

Article 5.

Sinking Funds for Highway Bonds.

142-44. Highway bonds; annual payments.
142-45. Highway bonds not issued; annual payments.
142-46. Source of funds.

Article 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

142-47. Exchange of securities.
142-48. Investment of sinking funds.
142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds.

Article 6.

Citations to Bond and Note Acts.

Article 7.

General Fund Bond Sinking Fund.

Sec.
142-50. Title of article.
142-51. Creation of Fund.
142-52. Amount placed in Fund.
142-53. Merger of general fund bond sinking funds previously created.
142-54. Provisions of Sinking Fund Commission Act applicable.

Article 1.

General Provisions.

§ **142-1. How bonds executed; interest coupons attached; where payable; minimum amount.**—All bonds or certificates of debt of the State, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the Governor, and countersigned by the State Treasurer, and sealed with the great seal of the State, and shall be made payable to bearer unless registered as hereinafter provided; and the principal shall be made payable by the State at a day named in the bond or certificate. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable either at a bank in the city of New York to be designated by the State Treasurer, or at the office of the State Treasurer in Raleigh, as may be designated by the Treasurer, or shall be made payable at the option of the holder, either at such bank in New York or at the office of the State Treasurer: Provided, that no original bond or certificate of debt of the State shall be sold for a sum less than par value; nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the State treasury. (1848, c. 89, s. 22; 1852, c. 9; 1852, c. 10, s. 10; R. C., c. 90, s. 3; Code, s. 3563; Rev., s. 5020; C. S., s. 7401; Ex. Sess. 1921, c. 66, ss. 1, 2.)

Editor's Note. — The 1921 amendment substituted the provision for all bonds being made payable to bearer unless registered for a provision that they should be payable to the purchaser or to bearer. The amendment also inserted the provision in regard to not attaching registered interest coupons, and the provision for optional place of payment. The provision for no bonds below par replaced a provision for no bonds below one thousand dollars.

Cited in Galloway v. Jenkins, 63 N. C. 147 (1869).

§ **142-2. Title of act and year of enactment recited in bonds.** — In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the chapter, and the year of the legislative session. (1850, c. 90, s. 6; R. C., c. 90, s. 6; Code, s. 3566; Rev., s. 5023; C. S., s. 7402.)

§ **142-3. Record of bonds kept by State Treasurer.**—The State Treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the State, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (1852, c. 10, s. 2; R. C., c. 90, s. 4; Code, s. 3564; Rev., s. 5021; C. S., s. 7403.)

§ **142-4. Books for registration and transfer.** — The State Treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the State heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the State Treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11; R. C., c. 90, s. 2; Code, s. 3562; Rev., s. 5019; C. S., s. 7404; Ex. Sess. 1921, c. 66, s. 3.)

Editor's Note.—Prior to the 1921 amendment this section provided for transfer by delivery of bonds payable to bearer, but those payable to holder by name alone were transferred by delivery to the State treasury for cancellation, when new bonds were issued.

§ **142-5. Registration as to principal.** — Upon the presentation at the office of the State Treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the State, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the State Treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation to the State Treasurer with a written assignment acknowledged or approved in a form satisfactory to the Treasurer. The name of the registered assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (1883, c. 25; Code, s. 3568; 1887, c. 287; Rev., s. 5025; C. S., s. 7405; Ex. Sess. 1921, c. 66, s. 4.)

Editor's Note.—Prior to the 1921 amendment, registered bonds were issued in exchange for coupon bonds, and coupon bonds were issued in exchange for registered bonds on application. The denomination of such bonds to be issued was also specified and the time of maturity and rate of interest was to be the same as on the bond surrendered.

§ **142-6. Registration as to principal and interest.**—If, upon the registration of any such bond or certificate, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the Treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond has been converted into a fully registered bond, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in the said register. (1856, c. 16; 1883, c. 25, s. 2; Code, s. 3569; 1887, c. 287, s. 2; Rev., s. 5026; C. S., s. 7406; Ex. Sess. 1921, c. 66, s. 5.)

Editor's Note.—Prior to the 1921 amendment this section provided for registration of bonds, and the admission in evidence of the registry in case of loss, also provisions for signing and sealing registered bonds and their exemption from taxation.

§ **142-7. No charge for registration.**—There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (1887, c. 287, ss. 4, 5; Rev., s. 5027; C. S., s. 7407; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49.)

Editor's Note.—Prior to the 1921 amendment a fee of two dollars was charged for exchange of bonds (which was for registration). All bonds surrendered were destroyed by the Treasurer in the presence of the Governor and Attorney General. By the 1921 amendment a fee of twenty-five cents was charged for each registration or transfer. By the 1925 amendment it was provided that no fees be charged.

§ **142-8. Application of §§ 142-1 to 142-9.**—Sections 142-1 to 142-9, both inclusive, as amended by chapter 66 of the Public Laws of the extra session of 1921, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C. S., s. 7408; Ex. Sess. 1921, c. 66, s. 7.)

Editor's Note.—Prior to the 1921 amendment this section provided for negotiation of bonds by surrender, cancellation and the issuance of a new bond.

§ **142-9. Duties performed by other officers.**—If the Council of State shall at any time find that either the Governor or the State Treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the Lieutenant-Governor may sign the same in lieu of the Governor, and they may be signed in lieu of the Treasurer by any member of the Council of State designated by it. (1864-5, c. 24; Code, s. 3567; Rev., s. 5024; C. S., s. 7409; Ex. Sess. 1921, c. 66, s. 8.)

Editor's Note.—Prior to the 1921 amendment this section provided for registration and transfer by the chief clerk in case the Treasurer was absent.

§ **142-10. Chief clerk may issue when Treasurer unable to act.**—Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notes of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notes shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

§ **142-11. When bonds deemed duly executed.**—State Bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

§ **142-12. State bonds exempt from taxation.**—The original bonds or certificates of debt of the State, which have been issued since the first day of January, one thousand eight hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation. (1852, c. 10, s. 4; R. C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C. S., s. 7410.)

§ **142-13. List of surrendered bonds kept; bonds and coupons destroyed.**—The Treasurer shall provide a substantially bound book for the purpose, in which he shall make a correct descriptive list of all bonds of the State surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds, being ascertained to be present, shall be consumed by fire in the presence of the Governor, the Treasurer, the Auditor, the Attorney General, the Secretary of State and Superintendent of Public Instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed. The Treasurer shall also provide a certificate setting forth the amount and kind of coupons which have been paid in the past year or biennium, which said coupons shall be consumed by fire in the same way and manner as is provided for the cremation of bonds referred to herein. (1879, c. 98, s. 8; Code, s. 3578; Rev., s. 5035; C. S., s. 7415; 1941, c. 28.)

Editor's Note. — The 1941 amendment substituted "descriptive" for "description" in line three, deleted a provision that the list contain the names of the persons surrendering the bonds, and added the provision relating to coupons.

§ **142-14. Issuance of temporary bonds.**—Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars, and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the Treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and execution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the Treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the Treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the Treasurer or such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

§ **142-15. Reimbursement of Treasurer for interest.**—Whenever it shall become necessary for the State Treasurer to borrow money to provide the maintenance fund for any State institution, the said Treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the Treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any State institution, unless said laws shall specifically state otherwise. (1923, c. 210; C. S., s. 7466(a).)

Article 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

§ **142-16. Governor and Council of State may borrow on note.**—The Governor and Council of State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

§ **142-17. Recital of facts entered on minutes; directions to Treas-**

urer; limit of amount.—The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand ($500,000) dollars in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in one thousand nine hundred and twenty-nine and not exceeding five hundred thousand ($500,000) dollars in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five per cent per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

§ **142-18. Report to General Assembly.**—At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the Governor and Council of State in borrowing money under this article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

§ **142-19. Power given to Director of Budget to authorize State Treasurer to borrow money.**—The Director of the Budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

Article 3.

Refunding Bonds.

§ **142-20. Title of article.**—This article shall be known and may be cited as the "State Refunding Bond Act." (1935, c. 445, s. 1.)

§ **142-21. Refunding bonds authorized for State.**—The State Treasurer is hereby authorized, by and with the consent of the Governor and Council of State, to issue at one time or from time to time bonds of the State for the purpose of refunding any or all bonds of the State then outstanding, but no such refunding bonds shall be issued except when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded. (1935, c. 445, s. 2.)

§ **142-22. Date and rate of interest; maturity.**—Such refunding bonds shall bear such date or dates and such rate or rates of interest, not exceeding six per cent per annum, payable semiannually, and shall mature at such time or times, not more than forty years from date, as may be fixed by the Governor and Council of State. (1935, c. 445, s. 3.)

§ **142-23. Execution; interest coupons; registration; form and denomination.**—Such refunding bonds shall be signed by the Governor and the State Treasurer, and sealed with the great seal of the State, and shall carry interest coupons which shall bear the signature of the State Treasurer, or a facsimile thereof, and such bonds shall be subject to registration as is now or may hereafter be provided by law for State bonds, and the form and denomination thereof shall be such as the State Treasurer may determine in conformity with this article. (1935, c. 445, s. 4.)

§ **142-24. Sale of bonds.**—Subject to determination by the Governor and Council of State as to the manner in which such bonds shall be offered for sale, whether by publishing notices in certain newspapers and financial journals or by mailing notices or by inviting bids by correspondence or otherwise, the State Treasurer is authorized to sell such bonds at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest. (1935, c. 445, s. 5.)

§ **142-25. Proceeds directed to separate fund; use limited.** — The proceeds of such bonds shall be placed by the State Treasurer in a separate fund and used solely for the purpose specified in § 142-21. (1935, c. 445, s. 6.)

§ **142-26. State's credit and taxing power pledged.**—The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1935, c. 445, s. 7.)

§ **142-27. Coupons receivable for debts due State.**—The coupons of said bonds after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1935, c. 445, s. 8.)

§ **142-28. Exemption from taxation.**—All of such bonds and coupons shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on such bonds shall not be subject to taxation as for income, nor shall such bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1935, c. 445, s. 9.)

§ **142-29. Investment in bonds made lawful for fiduciaries.**—It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any moneys in their hands in such bonds. (1935, c. 445, s. 10.)

Article 4.

Sinking Fund Commission.

§ **142-30. Title of article.**—This article shall be known as "The Sinking Fund Commission Act." (1925, c. 62, s. 1.)

§ **142-31. Creation; duties.**—A State Sinking Fund Commission is hereby created, the members of which shall be the Governor, State Treasurer and Auditor, who shall serve without additional compensation. It shall be the duty of the Commission to see that the provisions of all sinking fund laws are complied with and to provide for the custody, investment and application of all sinking funds. The Commission and its members may call upon the Attorney General for legal advice as to their duties, powers and responsibilities hereunder. (1925, c. 62, s. 2.)

§ **142-32. To adopt rules; organization.**—The Commission shall adopt rules for its organization and government and the conduct of its affairs. Its chairman shall be the Governor and its secretary the Auditor. All clerks and employees in the office of the Governor, Auditor and Treasurer may be called upon to assist the Commission. (1925, c. 62, s. 3.)

§ **142-33. Treasurer of Commission; liability.**—The State Treasurer shall be ex officio treasurer of the Commission and the custodian of the sinking fund and the investments thereof. He and the sureties upon his official bond as State Treasurer shall be liable for any breach of faithful performance of his duties under this article as well as his duties as State Treasurer, and his official bond shall be made to comply with this requirement. (1925, c. 62, s. 4.)

§ **142-34. Investment of sinking funds.**—Moneys in the sinking funds herein shall not be loaned to any department of the State, but shall be invested by the Commission in:

(a) Bonds of the United States or bonds or securities fully guaranteed both as to principal and interest by the United States.

(b) Bonds or notes of the State of North Carolina, and in the obligations of any quasi-public corporation in which the State of North Carolina owns not less than fifty-one per cent of its capital stock.

(c) Bonds of any other state whose full faith and credit are pledged to the payment of the principal and interest thereof.

(d) Bonds of any county in North Carolina, any city or town in North Carolina and any school district in North Carolina, provided such bonds are general obligations of the subdivision or municipality issuing the same and provided that there is no limitation of the rate of taxation for the payment of principal and interest of the bonds. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82; 1941, c. 17, s. 1.)

Cross Reference. — As to investment of bonds guaranteed by the United States, see § 53-44.

Editor's Note. — The 1931 amendment struck out all references to population. The 1935 amendment added the last clause to subsection (b), and the 1941 amendment made subsection (a) applicable to securities guaranteed by the United States.

§ **142-35. Purchase of securities.**—No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. No securities shall be purchased except bonds of the United States, or bonds or securities fully guaranteed both as to principal and interest by the United States, or bonds or notes of the State of North Carolina, unless the vendor shall deliver with the securities an opinion of an attorney at law, believed by the Commission to be competent and to be recognized by investment dealers as an authority upon the law of public securities, to the effect that the securities purchased are valid and binding obligations of the issuing governmental agency or unit, unless the Commission shall be satisfied that such opinion can be readily obtained when required, it being the intention of this requirement to assure the Commission that such securities are valid and that they will not be unsalable by the Commission because of doubts as to the validity thereof. The Commission is empowered to appoint one or more of its members for the purpose of making purchases and sales of securities. (1925, c. 62, s. 6; 1941, c. 17.)

Editor's Note. — The 1941 amendment rewrote this section.

§ **142-36. Interest of securities held as part of sinking fund.**—The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. Bonds and notes of the State of North Carolina purchased for any sinking fund shall not be canceled before maturity, but shall be kept alive, and the interest and principal thereof shall be paid into the sinking fund for which the same are held. (1925, c. 62, s. 7.)

§ **142-37. Registration of securities; custody thereof.**—Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The State of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the State Treasurer, but the Treasurer shall not make such release unless and until the securities to be so released shall have been sold by the Commission or until the Commission shall have ordered such release. The Treasurer may in his discretion keep all securities purchased for sinking funds in the vault in the revenue building or rent safety deposit boxes in responsible banks. (1925, c. 62, s. 8; 1947, c. 152.)

Editor's Note. — The 1947 amendment rewrote the second sentence.

§ **142-38. Expenses of Commission.** — The necessary expense of the Commission for the rental of a safety deposit box, publication of advertisements, postage, insurance upon securities in transit, etc., not exceeding one-twentieth of one per cent of the amount in all sinking funds at the end of any fiscal year, shall be a charge upon the general fund. (1925, c. 62, s. 9.)

§ **142-39. Report of Commission.**—The Commission shall make a report in writing to the General Assembly not later than the tenth day of each regular and extraordinary session thereof, stating the nature and amount of all receipts and disbursements of each sinking fund since the last preceding report, and the amount contained in each fund, and giving an itemized statement of all investments of each fund as to name of security, purpose of issuance, date of maturity and interest rate, which report shall be spread upon the journals of the Senate and House of Representatives. (1925, c. 62, s. 10.)

§ **142-40. Embezzlement by member of Commission.**—If any member of the Commission shall embezzle or otherwise willfully and corruptly use or misapply any funds or securities in any sinking fund for any purpose other than that for which the same are held, such member shall be guilty of a felony, and shall be fined not more than ten thousand dollars, or imprisoned in the State's Prison not more than twenty years, or both, at the discretion of the court. (1925, c. 62, s. 11.)

§ **142-41. False entry by secretary or treasurer.**—If the secretary or treasurer of the Commission shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as such officer, or shall wittingly or falsely form, or cause to be formed, any statement of the condition of any sinking fund, or any statement required by this article to be made, with intent in any of said instances to defraud the State, or any person or persons, such secretary or treasurer, as the case may be, shall be guilty of a misdemeanor and fined at the discretion of the court not exceeding three thousand dollars, and imprisoned for not exceeding three years. (1925, c. 62, s. 12.)

§ **142-42. Interest of member in securities; removal.**—If any member of the Commission shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in any securities purchased or sold by the Commission, or shall act as agent for any investor or dealer for any securities to be purchased or sold by the Commission, or shall receive directly or indirectly any gift, emolument, reward, or promise of reward for his influence in recommending or procuring any such purchase or sale, he shall forthwith be removed from his position, and shall upon conviction be guilty of a misdemeanor, and fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned, in the discretion of the court. (1925, c. 62, s. 13.)

§ **142-43. Report of sufficiency of sinking fund.**—When the funds or securities in any sinking fund shall be found by the Sinking Fund Commission to be sufficient with interest accretions reasonably to be expected for the retirement at maturity of all bonds for which such sinking fund is held, and when the Commission shall file a statement of such finding in the office of the Auditor and in the office of the State Treasurer, further payments into such sinking fund shall be suspended and shall not again be made unless such fund should thereafter become insufficient for any reason. (1925, c. 62, s. 18.)

Article 5.

Sinking Funds for Highway Bonds.

§ **142-44. Highway bonds; annual payments.**—For the retirement of the principal of nineteen million five hundred thousand dollars highway serial bonds heretofore issued under chapter two, Public Laws of 1921, regular session, a sinking fund is created, into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of one hundred thousand dollars. (1923, c. 188, s. 2; C. S., s. 7472(s); 1925, c. 62, s. 15.)

Cross References.—As to transfer of sinking fund created by this section to general fund bond sinking funds, see § 142-53. As to repeal of this article insofar as it conflicts with article 7 of this chapter, see note under § 142-50.

Editor's Note. — The 1925 amendment substituted the words "fiscal year ending June 30, 1924" for the word "year."

§ **142-45. Highway bonds not issued; annual payments.**—For the retirement of the principal of bonds issued for highway purposes, chapter two, Public Laws of 1921, regular session, over and above the nineteen million five hundred thousand dollars heretofore issued, a sinking fund is hereby created into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of four hundred thousand dollars. (1923, c. 188, s. 3; C. S., s. 7472(t); 1925, c. 62, s. 16.)

Editor's Note. — The 1925 amendment substituted the words "fiscal year ending June 30, 1924" for the word "year."

§ **142-46. Source of funds.**—All of the highway bond sinking fund payments to be made under §§ 142-44 and 142-45, aggregating five hundred thousand dollars ($500,000) annually, shall be made from the revenues collected under the provisions of said chapter two (2) Public Laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said chapter two (2) for the maintenance of the State Highway and Public Works Commission and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: Provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be entitled if no such amendment had been made. (1923, c. 188, s. 4; C. S., s. 7472(u); 1925, c. 45, s. 4; 1925, c. 133, s. 4.)

Article 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

§ **142-47. Exchange of securities.**—The State Sinking Fund Commission is hereby authorized to exchange any bonds of the State which shall at any time be held as an investment of moneys in any sinking fund under its control for like principal amounts of bonds of the State which shall then be held as an investment of moneys in any other sinking fund under its control, and in each such exchange each such sinking fund shall be charged with the market value of the bonds received by it, plus the accrued interest thereon, and shall be credited with the market value of the bonds exchanged therefor, plus the accrued interest thereon. Any difference in the amounts of such charges and such credits shall be adjusted by making the appropriate transfer of moneys from one sinking fund to the other sinking fund. The market value of each bond so exchanged shall be determined by the Commission, and such determination shall be based, as far as practicable, upon the current offering prices of bankers and dealers, taking into account the interest rates borne by the bonds and their maturities. (1943, c. 321, s. 1.)

§ **142-48. Investment of sinking funds.**—The State Sinking Fund Commission shall invest the moneys in the sinking funds created by §§ 142-44 and 142-45 in highway bonds of the State unless the Commission shall determine that it would be more practicable, at the time of such investment, to invest such moneys in other bonds of the State or in other securities eligible for such investment. (1943, c. 321, s. 2.)

§ **142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds.**—If requested so to do by the Governor and Council of State, the State Sinking Fund Commission may at any time cancel any highway bonds of the State which are held in the sinking fund created by § 142-44 and which are a part of the bonds for the payment of which said sinking fund was so created, and to cancel any highway bonds of the State which are held in the sinking fund created by § 142-45 and which are a part of the bonds for the payment of which said sinking fund was so created.

Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by § 142-44, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from one hundred thousand dollars to one hundred and fifty thousand dollars. Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by § 142-45, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from four hundred thousand dollars to six hundred thousand dollars. (1943, c. 321, ss. 3-5.)

Cross Reference.—For list of highway bond acts, see chapter 136, art. 8.

ARTICLE 6.

Citations to Bond and Note Acts.

1. Bonds to fund bonds issued pursuant to any act of the General Assembly passed prior to May 20, 1861, exclusive of bonds issued for the construction of the North Carolina Railroad; bonds issued pursuant to 1865, c. 3; bonds issued pursuant to 1867, c. 56; bonds issued pursuant to an act ratified March 10, 1866, entitled "An Act to Provide for the Payment of the State Debt Contracted before the War;" bonds issued pursuant to an act ratified August 10, 1868, entitled "An Act to Provide for Funding the Matured Interest on the Public Debt;" or any registered certificates belonging to the Board of Education pursuant to an act of the General Assembly of 1867. Consolidated Statutes, ss. 7411-7414, 7416-7432; 1879, c. 98, s. 1; 1901, c. 126; 1909, c. 399; 1913, c. 131; 1919, c. 314.
2. Bonds for the care of the insane, and to pay the deficit in the account of the State Hospital at Morganton. Consolidated Statutes, ss. 7433-7436; 1909, c. 510.
3. Bonds for payment of State bonds issued pursuant to 1903, c. 750 and 1905, c. 543, and to pay the holders of bonds of the issue upon which the South Dakota

judgment was rendered. Consolidated Statutes, ss. 7440-7444; 1909, c. 718; 1911, c. 73.

4. Bonds for State building. Consolidated Statutes, ss. 7437-7439; 1911, c. 66.

5. Bonds to relieve the deficit of the State treasury and to improve the new State building. Consolidated Statutes, ss. 7448-7452; 1913, c. 102.

6. Bonds for central heating plant. Consolidated Statutes, ss. 7445-7447; 1913, c. 143.

7. Bonds for construction and improvement of Caswell Training School at Kinston. Consolidated Statutes, ss. 5905-5912; 1911, c. 89, ss. 9, 10, 11; 1917, c. 269.

8. Bonds for permanently enlarging the State's educational and charitable institutions. Consolidated Statutes, ss. 7459-7463; 1917, c. 154; Joint Resolution No. 40, 1917; 1919, c. 44; 1919, c. 314.

9. Bonds for payment of North Carolina railroad bonds. Consolidated Statutes, ss. 7453-7458; 1919, c. 1; 1919, c. 11.

10. Notes in anticipation of the sale of bonds for permanent enlargement of certain State institutions. Consolidated Statutes, ss. 7464-7466, 7467-7472; 1919, c. 328.

11. Bonds to pay the notes authorized by 1921, c. 43. Consolidated Statutes, ss. 7472(z)-7472(ii); 1921, c. 107.

12. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(a)-7472(i); 1921, c. 165; Ex. Sess. 1921, c. 82.

13. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1921, c. 147.

14. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. Consolidated Statutes, ss. 5688-5694; 1923, c. 136, ss. 278-284; 1925, c. 201.

15. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(j)-7472(q); 1923, cc. 162, 164; 1925, c. 192; 1927, c. 147; 1929, c. 295; 1935, c. 439; 1937, c. 296; 1937, c. 392; Ex. Sess. 1938, c. 1.

16. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1925. 1925, c. 112.

17. Notes for funding prison debt. 1925, c. 132.

18. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1927, c. 199.

19. Bonds for Industrial Farm Colony for Women. 1927, c. 219, ss. 14-24; 1931, c. 128.

20. Bonds to acquire and develop State prison farm. 1927, c. 152; 1931, c. 110.

21. Bonds for payment of notes and obligations issued pursuant to 1927, c. 49. 1931, c. 28.

22. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1931, and to place the fiscal operations of the State for the biennium 1931-1933 upon a budgetary basis. 1931, c. 371, s. 2.

23. Funding Bond Act of 1933. 1933, c. 330.

24. Bonds for N. C. State stadium. 1933, c. 291; 1935, c. 62.

25. Notes to pay appropriations for 1935 and 1937. 1935, c. 129.

26. Notes for the purchase, by the State Textbook Purchase and Rental Commission, of textbooks and supplies for the pupils of the public schools of the State. 1935, c. 422, s. 6.

27. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. 1935, c. 201, ss. 1-8.

28. Bonds for the purchase, by the State Textbook Commission, of textbooks and supplies for the pupils of the public schools of the State. 1937, c. 169, ss. 7-10.

29. Bonds to reimburse for emergency advances. 1937, c. 193 (biennium 1937-1939).
30. Board of health bonds for revenue producing undertakings. 1937, c. 324.
31. New state office building bonds. 1937, c. 364.
32. Notes to pay appropriations for the biennium ending June 30, 1941. 1939, c. 77.
33. Validation of proceedings of the University of North Carolina relating to the issuance and payment of certain revenue bonds of the University authorized by 1935, c. 479, 1936, c. 2, and 1937, c. 323. 1939, c. 289.
34. North Carolina State College Athletic Stadium Loan Act. 1939, c. 399.
35. Bonds for the construction of an Eastern North Carolina Sanatorium for the Treatment of Tuberculosis. 1939, c. 325, ss. 7, 8, 9; 1941, c. 86, ss. 2, 2A.
36. Bonds to reimburse the State treasury for advances made therefrom for permanent improvements at certain State institutions and for purchasing books. 1939, c. 67.
37. Notes to pay appropriations for biennium ending June 30, 1943. 1941, c. 41.
38. Bonds to reimburse funds for emergency advances. 1941, c. 81.
39. Bonds for improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 94.
40. Bonds to refund the outstanding athletic stadium bonds issued by the North Carolina State College of Agriculture and Engineering of the University of North Carolina, and bonds for the liquidation of the outstanding indebtedness of the athletic department of said institution. 1941, c. 169. See also c. 240.
41. Bonds or notes for the protection of the State's interest in the Atlantic and North Carolina Railroad. 1941, c. 170.
42. Bonds and notes for construction of a building and improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 240.
43. Notes to pay appropriations for biennium ending June 30, 1945. 1943, c. 320.
44. Bonds for loan to Atlantic and North Carolina Railroad for rehabilitation of properties. 1943, c. 412.
45. Bonds for loan to Atlantic and North Carolina Railroad for refunding certain indebtedness. 1943, c. 443.
46. State Ports Bond Act of 1949. 1949, c. 820.
47. School plant construction and repair bonds. 1949, cc. 1020, 1249 (s. 22½), 1295.

Article 7.

General Fund Bond Sinking Fund.

§ **142-50. Title of article.** — This article shall be known as "the State General Fund Bond Sinking Fund Act of 1945." (1945, c. 3, s. 1.)

Laws Repealed.—Section 2 of the act inserting this article provides: "All laws and clauses of laws in conflict with this act, and in particular chapter six of the Session Laws of one thousand nine hundred and forty-three, the State Post-War Reserve Fund Act, insofar as it conflicts with the appropriations herein made, and chapter one hundred and eighty-eight of one thousand nine hundred and twenty-three, chapter one hundred and ninety-two of one thousand nine hundred and twenty-five, chapters one hundred and forty-seven, one hundred and fifty-two and two hundred and nineteen of one thousand nine hundred and twenty-seven, insofar as contributions are required to be made to these sinking funds for the redemption of general fund bonds covered by these acts, which bonds are provided for under the general fund bond sinking fund established by this act, are hereby repealed."

§ **142-51. Creation of Fund.**—There is hereby created a State General Fund Bond Sinking Fund for the purpose of retiring all outstanding general fund bonds and interest as they mature from time to time. (1945, c. 3, s. 1.)

§ **142-52. Amount placed in Fund.**—There is appropriated from the general fund of the State the sum of fifty-one million, five hundred eighty-five thousand and seventy-nine dollars ($51,585,079.00), which funds shall be taken from the general fund surplus, as may now exist or as may accrue by June thirtieth, one thousand nine hundred and forty-five, as far as possible and any additional amount necessary to provide the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,585,079.00) shall be taken from the State Post-War Reserve Fund established under §§ 143-191 to 143-194, and the amount necessary for this purpose is hereby appropriated from the State Post-War Reserve Fund, which sum so appropriated shall be transferred to "the State General Fund Bond Sinking Fund" and shall be used exclusively for the purpose of retiring the principal and interest on outstanding general fund bonds authorized by and issued under the authority of the following acts of the legislature, to-wit:

Title of Issue	Chapter	Year
State hospital	510	1909
Refunding	399	1909
Administration	66	1911
School for feeble-minded	87	1911
Refunding	73	1911
Improvement	102	1913
Funding	107	1921
Educational and charitable	165	1921
Educational and charitable	162	1923
Educational and charitable	192	1925
Educational and charitable	147	1927
Great Smoky Mountains Park (Serial)	48	1927
Farm Colony for Women	219	1927
The State prison farm	152	1927
World War veterans loan	97	1927
World War veterans loan	298	1929
General fund bonds (Debit balance)	330	1933
Educational and charitable	296	1937
State office building	365	1937
Permanent improvement	1	1938
Permanent improvement and school book	67	1939
Permanent improvement	240	1941
Permanent improvement	81	1941
Permanent improvement	86	1941

(1945, c. 3, s. 1; 1949, c. 655.)

Editor's Note. — The 1949 amendment inserted in the list of bond issues the references to World War veterans loan.

§ **142-53. Merger of general fund bond sinking funds previously created.**—The general fund bond sinking funds heretofore created under authority of chapter one hundred and eighty-eight of the Public Laws of 1923, chapter one hundred and ninety-two of the Public Laws of 1925, chapter one hundred and forty-seven of the Public Laws of 1927, chapter one hundred and fifty-two of the Public Laws of 1927, and chapter two hundred and nineteen of the Public Laws of 1927 for the purpose of retiring certain long term general fund bonds are hereby combined with, transferred to and made a part of "the State General Fund Bond Sinking Fund of 1945," and together with the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,-

585,079.00) appropriated by this law shall be used to retire the general fund bonds and interest as they may mature from time to time. (1945, c. 3, s. 1.)

Editor's Note.—Acts 1923, ch. 188, referred to in this section, was codified as §§ 142-44 through 142-46.

§ 142-54. Provisions of Sinking Fund Commission Act applicable.—The moneys paid into "the State General Fund Bond Sinking Fund of 1945" herein provided for, shall in all respects, be subject to the requirements, limitations and provisions of chapter sixty-two of the Public Laws of 1925, and as amended, and known as "the Sinking Fund Commission Act." (1945, c. 3, s. 1.)

Editor's Note. — The 1925 act referred to in this section was codified as §§ 142-30 through 142-45.

Chapter 143.

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143-166. Law Enforcement Officers' Benefit and Retirement Fund.

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ARTICLE 1.

Executive Budget Act.

§ **143-1. Scope and definitions.**—This article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be contrued to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Budget Bureau and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1.)

§ **143-2. Purposes.**—It is the purpose of this article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget and shall be the responsible head of the Budget Bureau, which Bureau is a part of the Governor's office. The Governor shall on or before the first day of July next after his inauguration appoint a budget officer, who shall be known as the "Assistant to the Director," and such officer shall serve for a term of four years beginning on the first day of July next after the inauguration of each Governor, at a salary to be fixed by the Director, who makes the appointment. The purpose of this article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Budget Bureau shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise. (1925, c. 89, s. 2; 1929, c. 100, s. 2.)

Editor's Note. — As Director of the Budget, the Governor has large powers in supervising the expenditures of State funds and in determining what appropriations shall be made by the General Assembly. The idea that our governments, federal, State and local, should be run in a business-like fashion is gaining prevalence and the budget system in government is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently. 4 N. C. Law Rev. 17.

§ **143-3. Examination of officers and agencies; disbursements.**—The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited; to supervise generally the accounting and auditing systems thereof now in force, and to inaugurate such changes in repect thereto which may be necessary, in his opinion, to exhibit and to furnish complete and correct information as to its financial condition, including the budget accounts of such departments, bureaus or associations within the terms of this article. The cost of making all audits and effecting all necesary changes in the system of accounting shall be paid from the regular maintenance appropriation made by the

General Assembly for such bureaus, departments, divisions, institutions, commissions, persons or agencies that may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; 1929, c. 337, s. 4.)

§ **143-4. Advisory Budget Commission.**—The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, and two other persons to be appointed by the Governor, shall constitute the Advisory Budget Commission, whose duties shall be such as are hereinafter defined.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon ten days' notice by the Director or Assistant to the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

Vacancies on the Commission shall be filled by the Governor: Provided, any vacancy caused by the death, resignation, or other removal from office of any member of the Commission by virtue of his office as a member of the General Assembly shall be filled by the Governor upon the recommendation of the presiding officer of that branch of the General Assembly in which such member holds office.

In all matters where action on the part of the Advisory Budget Commission is required by this article, three (3) members of said Commission shall constitute a quorum for performing the duties or acts required by said Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768.)

Editor's Note. — The 1931 amendment added the third paragraph, and the 1951 amendment added the last paragraph.

§ **143-5. Appropriation rules.**—All moneys heretofore and hereafter appropriated shall be deemed and held to be within the terms of this article and subject to its provisions unless it shall be otherwise provided in the act appropriating the same; and no money shall be disbursed from the State Treasury except as herein provided. (1925, c. 89, s. 5; 1929, c. 100, s. 5.)

Cited in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928).

§ **143-6. Information from departments and agencies asking State aid.**—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Since it is not practicable to require the members of the judicial system who preside over courts to attend and furnish such information, upon request of the Director, the Attorney General shall furnish such information, data and estimates and expenditures as may be desired in reference to the Judicial Department of this State. (1925, c. 89, s. 6; 1929, c. 100, s. 6.)

§ **143-7. Itemized statements and forms.** — The statements and estimates required under § 143-6 shall be itemized in accordance with the budget classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Budget Bureau. (1925, c. 89, s. 7; 1929, c. 100, s. 7.)

§ **143-8. Statements of Auditor as to legislative expenditures.**—On or before the first day of September, biennially, in the even numbered years, the State Auditor shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the budget classification adopted by the Director and approved and certified by the presiding officer of each House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the budget classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Auditor shall transmit to the Director with these estimates an explanation of all increases or decreases. These estimates and accompanying explanations shall be included in the budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8.)

§ **143-9. Information to be furnished upon request.**—The departments, bureaus, divisions, officers, commissions, institutions, or other State agencies or undertakings of the State, upon request, shall furnish the Director, in such form and at such time as he may direct, any information desired by him in relation to their respective activities or fiscal affairs. The State Auditor shall also furnish the Director any special, periodic, or other financial statements as the Director may request. (1925, c. 89, s. 10; 1929, c. 100, s. 9.)

§ **143-10. Preparation of budget and public hearing.**—The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State Government and the means of financing the same.

The Director, together with the Commission, shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. (1925, c. 89, s. 11; 1929, c. 100, s. 10.)

§ **143-11. Survey of departments.**—On or before the fifteenth day of December, biennially in the even numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June thirtieth.

(3) A statement of special funds.

(4) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11.)

§ **143-12. Bills containing proposed appropriations.** — The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

(a) A bill containing all proposed appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."

(b) A bill containing the views of the Budget Bureau with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.

(c) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Budget Bureau, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the Director and the Commission shall not agree as to the Appropriation, Revenue and Machinery Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14.)

§ 143-13. Printing copies of budget report and bills and rules for the introduction of the same.—The Director shall cause to be printed one thousand copies each of the budget report, the Budget Appropriation Bill, the Budget Revenue Bill, and the Budget Machinery Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Budget Appropriation Bill shall be introduced by the chairman of the committee on appropriations in each house of the General Assembly, and the Budget Revenue Bill and the Budget Machinery Bill shall be introduced by the chairmen of the finance committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the budget report and the Budget Appropriation Bill and the Budget Revenue Bill and the Budget Machinery Bill to the Governor-elect, on or before the fifteenth day of December, and the said budget report, Appropriation, Revenue and Machinery Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15.)

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill.—The appropriations committees of the House of Representatives and the Senate and sub-committees thereof shall sit jointly in open sessions while considering the budget and such consideration shall embrace the entire budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, board, commission, and agency of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or sub-committees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or sub-committees thereof. The said joint committee or any sub-committee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be such as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16.)

§ **143-15. Reduction and increase of items by General Assembly.**— The provisions of this article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rule adopted by either branch of the General Assembly.

The General Assembly may reduce or strike out such item in the Budget Appropriation Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Budget Appropriation Bill shall have been enacted in whole or in part or rejected, unless the Governor shall submit and recommend an emergency appropriation bill or emergency appropriation bills, which may be amended in the manner set out herein, and such emergency appropriation bill, or bills, when enacted, shall continue in force only until the Budget Appropriation Bill shall become effective, unless otherwise provided by the General Assembly.

The General Assembly may also increase any appropriation set out in the Budget Appropriation Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the budget report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17.)

§ **143-16. Article governs all departmental, agency, etc., appropriations.** — Every State department, bureau, division, officer, board, commission, institution, State agency, or undertaking, shall operate under an appropriation made in accordance with the provisions of this article; and no State department, bureau, division, officer, board, commission, institution or other State agency or undertaking shall expend any money, except in pursuance of such appropriation and the rules, requirements and regulations made pursuant to this article. (1925, c. 89, s. 17; 1929, c. 100, s. 18.)

§ **143-17. Requisition for allotment.** — Before an appropriation to any spending agency shall become available, such agency shall submit to the Director, not less than twenty days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who shall be governed in his control of expenditures by said allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director in writing. (1925, c. 89, s. 18; 1929, c. 100, s. 19.)

§ **143-18. Unincumbered balances to revert to treasury; capital appropriations excepted.**—All unincumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of the biennial fiscal period; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. (1925, c. 18, s. 19; 1929, c. 100, s. 20.)

§ **143-19. Help to Director.**—The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this article; and shall fix the compensation of all persons employed under this article; which shall be paid by the State Treasurer upon the warrant of the State Auditor. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this article, shall be reported to the General Assembly by the Director, and all payments made under this article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Budget Bureau. (1925, c. 89, s. 20; 1929, c. 100, s. 21.)

§ **143-20. Examination of accounts of State departments.**—The Director shall examine or cause to be examined annually before and/or after the close of each fiscal year, the accounts of the State Treasurer and the Auditor and shall examine or cause to be examined, the accounts and vouchers relating to all money received into and paid out of the State treasury during the preceding fiscal year, and shall cause a complete audit to be made annually of the condition of the State treasury and shall certify and report to the Budget Bureau such audits and the Budget Bureau, through the Governor, shall transmit such reports to the General Assembly at its next session. (1925, c. 89, s. 22; 1929, c. 100, s. 22.)

§ **143-21. Issuance of subpoenas.**—The Director shall have and is hereby given full power and authority to issue the writ of subpoena for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director of the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for contempt in the discretion of the court and to be fined as witnesses summoned to attend the superior court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney General under the direction of the Director. Any and all persons who shall be subpoenaed and required to appear before the Director or the Commission as witnesses concerning any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23.)

Editor's Note.—The words "Director of the Commission" in line four are in the language of the 1929 amendment but were undoubtedly intended by the General Assembly to read "Director or the Commission."

§ 143-22. Surveys, studies and examinations of departments and institutions.—The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and for the purpose of determining whether the proper system of modern accounting is had in such departments, institutions, commissions and agencies and to require and direct the installation of the same whenever, in his opinion, it is necessary and proper in order to acquire and to secure a perfect correlated and control system in the accounting of all departments, institutions, commissions, divisions, and State agencies including every department or agency handling or expending State funds, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this article. All auditing systems or uses prescribed, or to be prescribed hereunder, shall be administered by the Auditor. (1925, c. 89, s. 26; 1929, c. 100, s. 23.)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.—All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget. (1929, c. 100, s. 24.)

§ 143-24. Borrowing of money by State Treasurer.—The Director of the Budget, by and with the consent of the Governor and Council of State, shall have authority to authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. (1929, c. 100, s. 25.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.—All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Commissioner of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this act are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this act as to prevent any such overdraft or deficit. (1929, c. 100, s. 26.)

§ **143-26. Director to have discretion as to manner of paying annual appropriations.**—Unless otherwise provided, it shall be discretionary with the Director of the Budget whether any annual appropriation shall be paid in monthly, quarterly or semiannual installments or in a single payment. (1897, c. 368; Rev., s. 5372; C. S., s. 7683; 1925, c. 275, s. 9; 1929, c. 100, s. 27.)

§ **143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.**—All appropriations now or hereafter made to the educational institutions, and tō the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them, are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs of maintenance of such institutions, departments, and agencies. (1929, c. 100, s. 28.)

§ **143-28. All State agencies under provisions of this article.**—It is the intent and purpose of this article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this article. Any power expressed in this article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this article shall be liberally construed. (1925, c. 89, s. 28; 1929, c. 100, s. 29.)

§ **143-29. Delegation of power by Director.**—Any power or duty herein conferred on the Governor as Director may be exercised and performed by such person or persons as may be designated or appointed by him from time to time in writing. (1925, c. 89, s. 29; 1929, c. 100, s. 30.)

§ **143-30. Budget of State institutions.**—The several institutions of the State, boards, departments, commissions, agencies, persons or corporations, included with the terms hereof to which appropriations are made now or hereafter for permanent improvements or for maintenance, shall, before any of such appropriations, whether for permanent improvements or for maintenance, are available or paid to them or any one of them, budget their requirements and present the same to the Director of the Budget on or before the first day of June of each odd numbered year hereafter. There shall be a separate budget presented for permanent improvements and for maintenance. Each of said budgets shall contain the requirements of said institutions, boards, commissions, and agencies, persons and corporations, and undertakings, as hereinbefore defined, for the succeeding two years. Each institution, board, department, commission, agency, person or corporation, in the preparation of such budget, shall follow as nearly as may be the itemized recommendations of the Director of the Budget and Advisory Budget Commission and/or as amended by the General Assembly. The forms, except when modified and changed by authority of the Director of the Budget, shall be the forms used in presenting the requests. (1925, c. 230, s. 2; 1929, c. 100, s. 32.)

§ 143-31. Building and permanent improvement funds spent in accordance with budget.—All buildings and other permanent improvements, which shall be erected and/or constructed, shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the budget requests of such institution, board, commission, agency, person, or corporation filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the budget recommendations and/or as amended by the General Assembly for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was appropriated and budgeted, as herein required, and not in strict accordance with the terms of this article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the Auditor of the State not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the Auditor is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33.)

§ 143-32. Person expending an appropriation wrongfully.—Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney General for the use of the State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in § 1-83, subsection 2. (1925, c. 230, s. 4; 1929, c. 100, s. 34.)

§ 143-33. Intent.—It is an intent and purpose of this article that all departments, institutions, boards, commissions, agencies, persons or corporations to which appropriations for permanent improvements and/or maintenance are made, shall submit to the Director of the Budget their requests for the payment of such appropriations in the form of a budget, following the recommendations made by the Director of the Budget and the Advisory Budget Commission and/or as amended by the General Assembly. (1925, c. 230, s. 5; 1929, c. 100, s. 35.)

§ **143-34. Penalties and punishment for violations.**—A refusal to perform any of the requirements of this article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred and fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon thirty days' notice in writing to such offender. (1929, c. 100, s. 36.)

§ **143-34.1. Payrolls submitted to the Assistant to the Director of the Budget; approval of payment of vouchers.**—All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Assistant to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Assistant to the Director of the Budget. (1949, c. 718, s. 5.)

Article 2.

State Personnel Department.

§ **143-35. State Personnel Department established.**—(1) Department distinct from Budget Bureau and under Supervision of Director.—There is hereby created and established a State Personnel Department (hereinafter referred to as "Department") for the State of North Carolina. The Department shall be separate and distinct from the Budget Bureau and shall be under the administration and supervision of a Director appointed by the State Personnel Council. The salary of the Director shall be fixed by the Personnel Council and shall not exceed that of the highest paid appointive head of any other State department, bureau, agency or commission. The Director shall serve at the pleasure of the Personnel Council.

(2) State Personnel Council.—There is hereby created and established a State Personnel Council (hereinafter referred to as "Council") for the purpose of advising and assisting the State Personnel Director in preparing, formulating and promulgating rules and regulations, determining and fixing job classifications and descriptions, job specifications and minimum employment standards, standards of salaries and wages, and any and all other matters pertaining to employment under this article. The State Personnel Council shall consist of seven members to be appointed by the Governor of North Carolina on or before July 1, 1949. The Council shall have the power to designate the member of said Council who shall act as the chairman thereof. At least two members of the Council shall be individuals of recognized standing in the field of personnel administration and who are not employees of the State, who are subject to the provisions of this article; at least two members of the Council shall be individuals actively engaged in the management of a private business or industry; not more than two members of the

Council shall be individuals chosen from the employees of the State subject to the provisions of this article. The Council shall meet at least one time in each calendar quarter of the year, or upon call of the Governor, or of the Director, or a member of the Council, or at the request of the head of any department or agency when necessary to consider any appeal provided for hereunder. Five members of the Council shall constitute a quorum. Notice of meetings shall be given members of the Council by the Director who shall act as secretary to the Council. The members of the Council shall each receive seven dollars ($7.00) per day including necessary time spent in traveling to and from their place of residence within the State to the place of meeting while engaged in the discharge of the duties imposed hereunder, and his necessary subsistence and traveling expenses. Members of the Council who are the employees of the State, as provided hereunder, shall not receive any per diem for their services but such members shall receive traveling expenses and subsistence, while engaged in the discharge of their duties hereunder, at the same rate and in the same amount as provided for State employees without any deduction for loss of time from their employment. Two of the Council members shall be appointed by the Governor to serve for a term of two years. Two members shall be appointed to serve for a term of three years. Three members shall be appointed to serve for a term of four years and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each thereafter: Provided, however, that no two members appointed from the same occupational groups named in this article shall serve terms expiring on the same date. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member of the State Personnel Council shall not be considered a public officer, or as holding office within the meaning of article 14, section 7, of the Constitution of this State, but such member shall be a commissioner for a special purpose. The Governor may, at any time after notice and hearing, remove any Council member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(3) Personnel Officers Representing State Departments, Agencies and Commissions.—For the purpose of aiding and assisting in the operation and administration of this article, each State department, agency or commission shall appoint, or shall designate from among its present employees, a personnel officer to represent the department, agency or commission and the head of same in carrying out the provisions of this article within such department, agency or commission. All personnel officers designated hereunder shall serve in an advisory and consulting capacity to the State Personnel Director and the Council in both intra-Department and inter-Department personnel policies and practices.

(4) Merit System Council; Responsibility of State Personnel Director; Supervisor of Merit Examinations.—The Merit System Council created under the provisions of chapter 126 of the General Statutes, and all powers and duties heretofore exercised by the Merit System Council, shall continue in effect as provided in chapter 126 of the General Statutes: Provided, however, that the State Personnel Director shall be charged with the responsibility of carrying out the regulations and policies maintained and provided by the Merit System Council and the administration of same as applicable to individuals, employees and agencies of the State now subject to chapter 126 of the General Statutes, as amended, or as the same from time to time may be amended, but excluding and excepting from the application of this article all employees of the county welfare departments and the county, city, county-city and district health departments, and that nothing herein contained shall be construed so as to alter, abridge or deprive the Merit System Council of the authority vested in it by virtue of § 126-14. The State Personnel Director shall select and appoint, with the advice and approval of the Merit System Council, and in accordance with the Merit System regulations, a person designated as supervisor of merit examinations, who shall not be a member of the

Merit System Council and who shall be charged with the performance of the duties and functions of supervisor of merit examinations as provided by chapter 126 of the General Statutes. (1949, c. 718, s. 1; 1949, c. 1174.)

Editor's Note. — Session Laws 1949, c. 718, rewrote this article, inserted § 143-34.1 and amended §§ 126-2, 126-3 and 126-16. Section 6 of the said chapter provides: "Nothing herein shall be construed as authorizing the fixing of classifications and descriptions, job specifications and employment standards, standards of salaries or wages, or necessary number of positions, or otherwise which cause the total funds required by any department, agency, bureau, or commission to exceed the funds appropriated for salaries and wages in that agency for either year of the biennium."

Session Laws 1949, c. 1174, changed the compensation of a member of the council from ten to seven dollars a day.

The former article, which was entitled "Division of Personnel under the Budget Bureau", was codified from Public Laws 1931, c. 277, as amended by Public Laws 1933, c. 46. The 1931 act abolished the Salary and Wage Commission established under Public Laws 1925, c. 125.

§ 143-36. Duties and powers of Director and Council; surveys, classifications, etc., report of Director.—The State Personnel Director, with the head of each department, agency, bureau or commission of the State government, shall, as soon as practicable after the ratification of this article, undertake a new survey and investigation of the needs for personal service in all State departments, agencies, bureaus or commissions subject to this article for the purpose of establishing job specifications and minimum employment standards, job descriptions, job classifications, and salary schedules, and shall eliminate any existing inequalities between salaries and/or classifications of employees of substantially equal qualifications rendering substantially similar service. The State Personnel Director, with the head of each department, agency, bureau or commission, shall, after making such survey and investigation and upon the information so assembled, and with the approval of the Council, fix, determine and classify the necessary number of positions and employees in all State departments, bureaus, agencies and commissions, the type and nature of work to be performed in such positions and by employees, and shall fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and such intermediate salary rate or rates as may be deemed necessary and equitable to be paid for all such services and positions and to all employees of the State subject to the provisions of this article. When the personnel survey and investigation is completed with respect to a particular department, bureau, agency or commission, the State Personnel Director shall file a report with the Governor and with the head of such department, bureau, agency or commission, setting out the number of allowable positions, the classification of the positions, and the duties to be performed and/or positions to be filled, and the salaries and wages to be paid to each of the employees in said department, bureau, agency or commission, and the scale of increments to be granted at least once each year to each employee whose services have met the standard of efficiency as established by the State Personnel Director and approved by the Council and Governor: Provided, however, in establishing the standards of efficiency for the purpose of annual increments, the regulations shall provide that all employees whose services merit retention in service shall, as hereinafter set forth, be granted annual increments up to but not exceeding the intermediate salary step nearest to the middle of the salary range established for the respective classification and/or position, and those employees whose services meet higher standards, as formulated and fixed by the State Personnel Director and Council, shall, as hereinafter set forth, be given annual increments up to but not exceeding the maximum of the salary range for the respective classification and/or position. (1949, c. 718, s. 1.)

§ 143-37. Contents of report to become fixed standard; effective date.—When said report with respect to any such department, bureau, agency or commission has been completed and filed with and approved by the Governor, and also filed with the head of such department, bureau, agency or commission, the findings in said report shall then become the fixed standard for the number of allowable positions and employees, the classification of positions and the duties to be performed, and/or the positions to be filled, the salaries and/or wages to be paid, and the increments to be granted to all employees in the department, bureau, agency or commission, to which said report relates, and it shall thereupon be the duty of the head of such department, bureau, agency or commission, on the first day of the next month, beginning not less than thirty days subsequent to the date of the reception of said report by him, to put the same into effect, and thereupon with respect to such department, bureau, agency or commission, the classification of positions, the number of employees, the duties to be performed and/or the positions to be filled, the salaries and wages to be paid, and the increments to be granted, all as specified in said report, shall become the only allowable standard for and with respect to such department, bureau, agency or commission. (1949, c. 718, s. 1.)

§ 143-38. Further surveys; reconsideration and change of report.—It shall be the duty of the State Personnel Director upon request of the head of any State Department, bureau, agency or commission, and also from time to time without such request, to make additional surveys in regard to, and to keep informed of, the needs for personal services in the several State departments, bureaus, agencies and commissions, and to reconsider the report hereinbefore provided for, and with the approval of the council and the Governor, to make changes therein in accordance with such findings; and upon report by him to the head of any department, bureau, agency or commission, and to the Governor, setting out such findings and changes, it shall be the duty of the head of such department, bureau, agency or commission, to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the date of receipt by him of such report: Provided, however, the State Personnel Director shall have the authority to make necessary individual adjustments within the framework of the approved salary and classification plan. (1949, c. 718, s. 1.)

§ 143-39. Payment of increments considered State personnel policy; increments to be considered in request for appropriations.—All salary ranges for State employees not exempted from this article shall contain a fixed and uniform scale of increments between the minimum and maximum salary rate as fixed and determined according to the provisions of § 143-36 of this article. It shall be considered a part of the personnel policy of this State that these increments or increases in pay shall be granted in accordance with standards and regulations fixed, determined and established by the State Personnel Director and the Council as authorized and provided under the provisions of § 143-36 of this article. The head of each department, bureau, agency or commission, when making his request for the ensuing biennum shall take into account the annual and other increments based on efficiency standards as established, or as may be established, under the provisions of the article, for the employees of his department, bureau, agency or commission, and such head shall anticipate the amounts which shall be required during the biennium for the purpose of paying such increments, and shall include such amounts in his appropriations request, but in no case shall the amount estimated for increments based on efficiency standards exceed two-thirds the sum which would be required to grant efficiency increments to all the personnel of the agency then receiving, or who would receive during the first year of the biennium, the intermediate salary nearest the middle of the salary range established for the respective classification and/or position; provided, however, with the consent of the Personnel Council, State departments, bureaus, agencies or commissions with twenty-five (25) or less employees may exceed the two-thirds restrictions herein set up. (1949, c. 718, s. 1.)

§ 143-40. Director and Council to fix holidays, vacations, hours, sick leave and other matters pertaining to State employment.—The State Personnel Director, upon the advice and approval of the Council, shall fix, determine and establish the hours of labor in each State department, bureau, agency or commission, and is authorized and empowered to make all necessary rules and regulations with respect to holidays, vacations, sick leave or any other type of leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor, all of which shall be subject to the approval of the Governor: Provided, however, that the amount of annual leave granted as a matter of right to each regular State employee shall not be less than one and one-fourth days per calendar month cumulative to at least thirty days, and that sick leave granted to each State employee shall not be less than ten days for each calendar year, accumulative from year to year. (1949, c. 718, s. 1.)

§ **143-41. Director to determine qualifications of applicants for positions.**—The State Personnel Director, with the advice and approval of the Council and Governor, shall adopt rules and regulations to the end that applicants for positions in the various State departments, bureaus, agencies, and commissions covered by this article may file applications for State employment with the Director, and it shall be the duty of the Director to examine into the qualifications of each applicant within a reasonable period of time after the application is filed, and the Director shall notify each applicant of the results of such examination in writing and shall certify and shall keep a list of persons so qualified. Said list shall be open to the inspection of the heads of the various departments, bureaus, agencies and commissions of the State, and such heads may from time to time fill positions from such lists. When any position covered by this article has remained unfilled for a period of ten days, it shall be the duty of the department, bureau, agency or commission in which the unfilled position exists to notify the Director of the fact, and the Director shall list the unfilled position, so long as it shall remain unfilled, on the list which he shall keep posted in his office where it shall be available on demand to any person seeking employment in various State agencies, departments, bureaus or commissions. The list of certified applicants and list of unfilled positions shall be presented to the Council for its information at each regular meeting of the Council. (1949, c. 718, s. 1.)

§ **143-42. Appeal provided in case of disagreement.** — In the event there shall be a disagreement between the State Personnel Director and the head of any other department, bureau, agency or commission of the State or between the State Personnel Director and any employee subject to this article because of any ruling of the Director upon any question involving such other department, bureau, agency or commission, or any of its positions, employees, or other matter within the scope and purview of this article, then the matters in dispute shall be heard by the Council. Any employee or agency head may appeal from the decision of the Council and the matter shall be heard by the Governor and the decision or action of the Governor thereon shall be final. (1949, c. 718, s. 1.)

§ **143-43. Offices of State Personnel Department; Department to employ clerical and necessary assistants.**—The Board of Public Buildings and Grounds shall provide the State Personnel Department with adequate offices in the city of Raleigh, North Carolina. The State Personnel Director shall be charged with the supervision and administration of all activities subject to the jurisdiction and control of the State Personnel Department and, subject to the approval of the Council and Governor, said Director is hereby authorized to employ clerical and such other assistants as may be deemed necessary and adequate in order to carry out the purpose and intent of this article. For the purpose of establishing and fixing proper and adequate standards, classifications, job descriptions, specifications and salaries for technical, professional and skilled employees and for any other purposes pertinent to this article, the Director may, in co-operation with the head of any other State department, bureau, agency or commission, make use of the data, studies and services of any such department, bureau, agency or commission or the technical, professional or special knowledge or services of any employees of such department, bureau, agency or commission. (1949, c. 718, s. 1.)

§ 143-44. Director to determine the qualifications of State employees selected by heads of departments; persons employed on effective date deemed qualified.—All persons employed in any department, bureau, agency or commission of the State government on the effective date of this article shall be deemed qualified for the positions they hold or occupy, provided no person who has held any position for a period of less than six months on the effective date of this article shall be deemed qualified until he shall have completed six months of satisfactory service in such position or shall before that time have been examined and found qualified by the Director in accordance with the rules and regulations of the Council.

The selection and appointment of all personnel of all of the departments, bureaus, agencies or commissions of the State, shall, as heretofore, be exercised by the head of the department, bureau, agency or commission as to which the employment is to be performed, but, from and after the effective date of this article, such employment shall be subject to the approval of the State Personnel Director, as to whether such employees so selected meet the standards of qualifications established under this article, and, if such person so selected is found duly qualified according to such standards, the Personnel Director shall approve the employment if otherwise authorized and permissible under this article. Any employee of the State or any person seeking employment who has been found by the Director not to be qualified for the position applied for may appeal the decision of the Director to the Council at its next regular meeting after he has received notice of disqualification. (1949, c. 718, s. 1.)

§ 143-45. Director to certify copies of reports to State Auditor and Budget Bureau.—The State Personnel Director shall transmit to the State Auditor and the Budget Bureau copies of his report or reports, or any changes in same, with respect to the various departments, bureaus, agencies and commissions, and the salaries and wages, including increments, for such positions and employees in the several departments, bureaus, agencies and commissions and the same shall be paid out of the appropriation for such purposes and in accordance with the schedule set out in said report or reports or any duly established changes made therein: Provided, however, that when the Director of Personnel shall have approved any employment or salary increase in any department, bureau or agency of the State government, the certification for payment by the Assistant to the Director of the Budget, as required by § 143-34.1, shall not be construed as conferring upon or vesting in the Assistant to the Director of the Budget any authority or control over the employment of personnel, salaries, wages, hours of labor, vacations, sick leave, classifications, standards, regulations and reports, matters, things, administration and functions committed and vested in this article to the jurisdiction and control of the State Personnel Director and Council as set forth in this article. (1949, c. 718, s. 1.)

§ 143-46. Exemptions; persons and employees not subject to this article. — The provisions of this article shall not apply to certain persons and employees as follows: Persons employed solely on an hourly basis; public school superintendents; principals and teachers and other public school employees; instructional and research staff of the educational institutions of the State; professional staff of hospitals, asylums, reformatories and correctional institutions of the State; members of boards, bureaus, agencies, commissions, councils and advisory councils, compensated on a per diem basis; constitutional officers of the State and except as to salaries, their chief administrative assistant; officials and employees whose salaries are fixed by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State, or Advisory

Budget Commission, by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by the Governor subject to the approval of a definitely named officer, agent, bureau, agency or commission of the State by authority of a specific statute explicitly pertaining to such officials and/or employees; officials and/or employees whose salaries are fixed by statute or by virtue of a specific statutory method other than by the method provided by this article explicitly pertaining to such officials and/or employees. In all case of doubt or where any question arises as to whether or not any person, official or employee is subject to the provisions of this article, the doubt, controversy or question shall be investigated and decided by the State Personnel Director with the approval of the Council and such decision shall be final. Where the approval of any appointment, employment and/or salary is required by statute to be made by the Budget Bureau or assistant to the Director of the Budget (by whatever title or name), all such authority and power of approval, in whatever manner or form exercised, is hereby transferred to and vested in the State Personnel Director, and all such statutes shall be deemed to be amended to such extent. (1949, c. 718, s. 1.)

§ 143-47. Classifications and salaries established prior to effective date of article to remain in force until changed.—All classifications, grades, salaries, wages, hours of work, vacation, sick leave, positions and standards heretofore established by the Division of Personnel under the Budget Bureau prior to April 1, 1949, shall remain in force and effect until the same are amended, altered, voided or replaced by the State Personnel Director and the Council acting under the authority of this article. (1949, c. 718, s. 1.)

Article 3.

Division of Purchase and Contract.

§ 143-48. Creation of Division of Purchase and Contract; Director.—There is hereby created in the Governor's office a division to be known as the Division of Purchase and Contract, which Division shall be under the supervision and control, subject to provisions of this article, of a Director of Purchase and Contract. (1931, c. 261, s. 1; 1931, c. 396.)

§ 143-49. Powers and duties of Director.—The Director of Purchase and Contract provided for in this article shall have power and authority, and it shall be his duty, subject to the provisions of this article:

(a) To canvass all sources of supply, and to contract for the purchase of all supplies, materials and equipment required by the State government, or any of its departments, institutions or agencies under competitive bidding in the manner hereinafter provided for.

(b) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State government for any of its departments, institutions or agencies; there shall be included in the contract for the printing of the Session Laws of the General Assembly such specifications as to the time limit within which, or the speed with which, such Session Laws are to be printed as to insure the speediest publication practicable so as to make possible an early distribution of the Session Laws after the adjournment of the General Assembly.

(c) To purchase or contract for all telephones, telegraph, electric light power, postal and any and all other contractual services and needs of the State government, or any of its departments, institutions, or agencies; or in lieu of such purchase or contract to authorize any department, institution or agency to purchase or contract for any or all such services.

(d) To rent or lease all grounds, buildings, offices, or other space required by any department, institution, or agency of the State government: Provided, this shall not include temporary quarters for State highway field forces or convict camps, or temporary places of storage for road materials.

(e) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer and or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to maintain inventories of all fixed property and of all moveable equipment, supplies and materials belonging to the State government, or any of its departments, institutions or agencies.

(f) To make provision for and to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same.

(g) To permit charitable, nonprofit corporations operating charitable hospitals, under such rules, regulations and procedures as the Advisory Budget Commission shall adopt, to purchase hospital supplies and equipment under contracts negotiated and entered into by the Division of Purchase and Contract for the purchase of hospital supplies and equipment for State sanatoria, hospitals and other medical institutions operated by the State or agencies of the State. (1931, c. 261, s. 2; 1951, c. 3, s. 1; 1951, c. 1127, s. 1.)

Cross Reference. — As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note. — The first 1951 amendment added the part of subsection (b) appearing after the semicolon, and the second 1951 amendment added subsection (g).

§ 143-50. Certain contractual powers exercised by other departments transferred to Director.—All rights, powers, duties and authority relating to State printing, or to the purchase of supplies, materials and equipment now imposed upon and exercised by any State department, institution, or agency under the several statutes relating thereto, are hereby transferred to the Director of Purchase and Contract and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Purchase and Contract under the provisions of this article. (1931, c. 261, s. 3.)

§ 143-51. Reports to Director required of all agencies as to needs.—It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Director of Purchase and Contract when requested, and on blanks to be approved by him, tabulated estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Purchase and Contract. (1931, c. 261, s. 4.)

§ 143-52. Consolidation of estimates by Director; bids; awarding of contract; rules and regulations.—The Director of Purchase and Contract shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all State departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of State-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Division of Purchase and Contract, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the Director of Purchase and Contract to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall where-ever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Director of Purchase and Contract with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the faithful performance of any contract may be required of the successful bidder in the discretion of the Director of Purchase and Contract. After the contracts have been awarded, the Director of Purchase and Contract shall certify to the several departments, institutions and agencies of the State government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for.

The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(a) Designating a board of award, composed of members of the Budget Commission, or other regular employees of the State or its institutions (who shall serve without added compensation), to act with the Director in canvassing bids and awarding contracts.

(b) Fixing a quorum of the board of award and prescribing the routine and conditions to be followed in canvassing bids and awarding contracts.

(c) Prescribing routine for securing bids and awarding contracts on items that do not exceed $2,000 in value.

(d) Prescribing items and quantities to be purchased locally.

(e) Providing that where bids are unsatisfactory the Division, with the approval and consent of the Budget Commission, may reject all bids and purchase the article in the open market, but only at a lower price.

(f) Prescribing procedure to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(g) Adopting any other rules and regulations necessary to carry out the purpose of this article. (1931, c. 261, s. 5; 1933, c. 441, s. 1.)

Editor's Note. — The 1933 amendment added the second paragraph containing subsections (a) to (g).

§ 143-53. Requisitioning for supplies by agencies; must purchase through sources certified.—After sources of supply have been established by contract under competitive bidding and certified by the Director of Purchase and Contract to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition on blanks to be approved by the Director of Purchase and Contract, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of Purchase and Contract. One copy of such requisition shall be sent to the Director of Purchase and Contract when the requisition is issued. (1931, c. 261, s. 6.)

§ 143-54. Certain purchases excepted from provisions of article.—Unless otherwise ordered by the Director of Purchase and Contract, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Purchase and Contract shall not be mandatory in the following cases:

(a) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets and periodicals for the use of the State Library or any other library in the State supported in whole or in part by State funds.

(b) Perishable articles and such as fresh vegetables, fresh fish, fresh meat, eggs and milk: Provided, that no other article shall be considered perishable within the meaning of this clause, unless so classified by the Director of Purchase and Contract with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall wherever possible be based on at least three competitive bids. Whenever an order or contract for such articles is awarded by any of the departments, institutions and agencies of the State government a copy of such order or contract, together with a record of the competitive bids upon which it was based, shall be forwarded to the Director of Purchase and Contract. (1931, c. 261, s. 7.)

§ 143-55. Purchase of articles in certain emergencies.—In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Purchase and Contract shall have power to purchase in the open market any necessary supplies, materials or equipment for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency and his transactions thereunder shall be transmitted in writing by the Director of Purchase and Contract to the Advisory Budget Commission at its next meeting and shall be entered in the minutes of the Commission. (1931, c. 261, s. 8.)

§ 143-56. Contracts contrary to provisions of article made void.—Whenever any department, institution or agency of the State government, required by this article and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment through the Director of Purchase and Contract shall contract for the purchase of such supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department, institution or agency purchases any supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, the executive officer of such department, institution or agency shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor. (1931, c. 261, s. 9.)

§ 143-57. Preference given to North Carolina products and articles manufactured by State agencies; sales tax considered.—The Director of Purchase and Contract shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution: Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the State of North Carolina which is levied now or hereafter may be levied and in no case shall a bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2.)

Editor's Note. — The 1933 amendment added the last proviso.

§ 143-58. Division of Purchase and Contract directed to give preference to home products.—The Division of Purchase and Contract or any other constituted department which is authorized to purchase foodstuff and other supplies for State institutions, is hereby directed in all cases where the prices, product, or other supplies are available and equal, the said purchasing department shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the State of North Carolina. (1933, c. 168.)

§ 143-59. Rules and regulations covering certain purposes.—The Director of Purchase and Contract, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this article:

(a) Requiring monthly reports by State departments, institutions or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(b) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(c) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemical and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.

(d) Prescribing the manner in which purchases shall be made by the Director of Purchase and Contract in all emergencies as defined in § 143-55.

(e) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article.

(f) Notwithstanding any of the provisions of this article, the Director of Purchase and Contract, with the approval of the Advisory Budget Commission, may follow whatever procedure is deemed necessary to enable the State, its institutions and agencies, to take advantage of the sale of any war surplus material sold by the federal government or its disposal agencies. (1931, c. 261, s. 11; 1945, c. 145.)

Editor's Note. — The 1945 amendment added subsection (f).

§ 143-60. Standardization Committee.—It shall be the duty of the Governor to appoint a Standardization Committee to consist of seven members as follows: The Director of Purchase and Contract, who shall be chairman of said Committee; an engineer from the State Highway and Public Works Commission to be appointed by the Governor upon the recommendation of the chairman of the State Highway and Public Works Commission; a representative of the State educational institutions to be appointed by the Governor, a representative of the State departments to be appointed by the Governor, a representative of the State charitable and correctional institutions to be appointed by the Governor, and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to formulate, adopt, establish and/or modify standard specifications applying to State contracts. In the formulation, adoption and/or modification of any standard specifications, the Standardization Committee shall seek the advice, assistance and co-operation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall in so far as possible satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect, to every State purchase of the commodity described in such specifications. In the preparation of any standard specifications the Standardization Committee shall have power to make use of any State laboratory for chemical and physical tests in the determination of quality. (1931, c. 261, s. 12.)

§ 143-61. Public printer failing to perform contract; course pursued.—If any person who has contracted to do the public printing for the State shall fail to perform his contract according to the terms thereof, the Division of Purchase and Contract shall procure the public printing to be done by other parties, and the Attorney General shall institute suit in the Superior Court of Wake County in the name of the State to recover of the public printer and his bond any damages for failure to perform the contract. (1899, c. 724; 1901, cc. 280, 401, 667; Rev., s. 5094; C. S., s. 7289; 1931, c. 261, s. 2.)

§ 143-62. Law applicable to printing Supreme Court Reports not affected.—Nothing in this article shall be construed as amending or repealing § 7-34, relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13.)

§ 143-63. Appointment of Director and compensation; qualifications; assistants; bond.—The Director of Purchase and Contract shall be appointed by the Governor, who shall fix his compensation subject to the approval of the Advisory Budget Commission. The Director shall have had at least two years experience in buying supplies, materials and equipment for governmental agencies, or for a private concern or corporation. He shall serve at the pleasure of the Governor and he shall have authority to employ such assistants as he shall deem necessary and fix their compensation, subject to the approval of the Assistant Director of the Budget. The Director shall give such bond for the faithful performance of his duties as shall be fixed by the Governor. (1931, c. 261, s. 14; 1931, c. 277, s. 15; 1933, c. 46, s. 1.)

§ 143-64. Financial interest of officers in sources of supply; acceptance of bribes.—Neither the Director of Purchase and Contract, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials, or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15.)

ARTICLE 4.

World War Veterans Loan Administration.

§§ **143-65 to 143-105:** Deleted by Session Laws 1951, c. 349.

Editor's Note. — Session Laws 1951, c. 349, directed the board of advisers of the World War Veterans Loan Fund to complete the administration of all duties imposed upon them by article 4 of chapter 143 of the General Statutes by June 30, 1951, and provided that thereafter the provisions of said article, containing §§ 143-65 through 143-105, should be eliminated from the General Statutes.

ARTICLE 5.

Check on License Forms, Tags and Certificates Used or Issued.

§ **143-106. Authority of State Auditor as to blank forms of licenses, etc., monthly report to Auditor; spoiled and damaged forms; forms marked "void" and unnumbered forms.**—The Auditor shall have the authority to require State departments and institutions to furnish him with complete information as to all blank forms of licenses, tags, or certificates received by them. At his request, the State departments or agencies issuing and delivering licenses, tags, or certificate shall furnish the Auditor with complete copies or lists of such issuances. If there be any of such blank license forms, tags, or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be kept by such department or agency subject to the audit and inspection of the Auditor. Any license forms, tags, or certificates being used by the department or agency as a printer's copy, or in any other way being used for a sample, shall be first marked "void" in bold letters on the face of the form. These voided licenses or certificates shall be presented to the Auditor or his representatives before being released. The Auditor may, at his discretion, allow the use of unnumbered license forms or certificates provided the number and amount is entered thereon by an accounting or bookkeeping machine meeting his approval. (1931, c. 398, s. 1; 1951, c. 1010, s. 2.)

Editor's Note. — The 1951 amendment rewrote former §§ 143-106 and 143-107 to appear as this section. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ **143-107:** Rewritten as § 143-106 by Session Laws 1951, c. 1010, s. 2.

ARTICLE 6.

Officers of State Institutions.

§ **143-108. Secretary to be elected from directors.** — The board of directors of the various State institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C. S., s. 7517.)

§ **143-109. Directors to elect officers and employees.**—All officers and employees of the various state institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C. S., s. 7518.)

§ **143-110. Places vacated for failure to attend meetings.**—Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ 143-111. Director not to be elected to position under board.—It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various State institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C. S., s. 7519.)

§ 143-112. Superintendents to be within call of board meetings.—The superintendent of each of the various State institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C. S., s. 7520.)

§ 143-113. Trading by interested officials forbidden.—The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C. S., s. 7521.)

§ 143-114. Diversion of appropriations to State institutions.—It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State institution to which money is appropriated for its maintenance by the State to divert, use, or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C. S., s. 7521(a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.—Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of § 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned in the discretion of the court. (1921, c. 232, s. 2; C. S., s. 7521(b).)

§ 143-116. Venue for trial of offenses.—All offenses against §§ 143-114 and 143-115 shall be held to have been committed in the county of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C. S., s. 7521(c).)

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ **143-117. Institutions included.**—All persons admitted to the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, Caswell Training School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070.)

Editor's Note. — This article is an attempt to place all State charitable institutions on the same basis, with similar policies, so that the expense which the State bears will be lightened by requiring those who are able to pay to bear the expense of their care, maintenance and treatment. Suits may be brought in favor of the State for the recovery of the cost of caring for patients who are able to pay, and such patients may be removed from State institutions if no payment is made. 4 N. C. Law Rev. 17.

The 1949 amendment struck out "the School for the Blind and Deaf at Raleigh" from the list of institutions named in this section.

§ **143-118. Governing board to fix cost and charges.**—The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, are hereby empowered with the final authority to determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each inmate or patient, and the said boards of trustees or directors shall, to the best of their ability, fix such cost so as to include all the cost of such care, maintenance, treatment and training at such institutions, for each respective inmate, pupil or patient thereof, and the said sum, when so fixed, shall be the actual cost thereof: Provided, that the respective boards of directors of each of said institutions above named, in determining and fixing the actual cost of such care, maintenance and treatment to be paid for by non-indigent inmates thereof, are hereby given full and final authority to fix a general rate of charge, to be paid on a monthly basis by inmates able to pay same, or in cases where indigent inmates later are found to be non-indigent, then such cost for past care and maintenance of such inmates shall be paid in one or more payments based on the monthly rates of cost in effect for the period or periods of time during which such inmates have been confined in said institutions. The past acts of the boards of directors in fixing a monthly rate to be paid by non-indigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for care, maintenance and treatment, the rates so fixed by said board of directors shall prevail and said collections shall be made in accordance therewith. In any action by any of said State's charitable institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, now pending or which may hereafter be instituted, a verified and itemized statement of the account, showing the period of time during which the said non-indigent inmate was confined to the institution, the monthly rate of charge as fixed by said board of directors of such institution for the period of time that the inmate was confined therein, the total amount claimed to be due thereon as predicated upon said rate of charge, and the proper credits for any payments which may have been made on said account, shall be filed with the complaint and shall constitute a prima facie case, and such State institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the inmate's guardian, trustee, administrator, executor, or other fiduciary, that said verified and itemized statement of the superintendent or bookkeeper of said institution is not correct because of:

(a) An error in the calculation of the amount due as predicated upon said monthly rate of charge fixed by the board of directors, or

(b) An error as to the period of time during which the inmate was confined in said State institution, or

(c) An error in not properly crediting the account with any cash payment, or payments, which may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1.)

Editor's Note. — The proviso relating to the right to fix general rate charges was added by the 1935 amendment.

§ **143-119. Payments.**—Such cost, when so fixed and determined by the respective boards of trustees or directors of each institution, shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such funds, and a receipt for the payment of such cost in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the cost, as herein provided for, the superintendent of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The respective boards of trustees or directors of the various institutions are vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of this article directing the boards of directors of the various institutions of this State above named to ascertain which of the inmates are nonindigent and able to pay for their care, maintenance and treatment, and also directing said boards of directors to make certain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs them to remove all of those inmates found able to pay but who refuse to pay, and all of the other provisions of this article relating to the manner in which said board shall collect said costs, shall be construed to be directory provisions on the part of the authorities of said institutions and not mandatory, and the failure on the part of said authorities of such institutions to perform any or all of said provisions shall not affect the right of the State institutions so named to recover in any action brought for that purpose, either during the lifetime of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2.)

Editor's Note. — The 1935 amendment added the last sentence.

§ **143-120. Determining who is able to pay.**—From and after March 4, 1925, the respective boards of trustees or directors of each institution shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this article shall be fixed or determined and payment shall be made in accordance with the terms of this article. (1925, c. 120, s. 4.)

Where patient is indigent at time of admission to State hospital and later becomes non-indigent, under this section, the hospital is entitled to recover the actual cost of the ward's care and maintenance for the whole period the ward was an inmate of the hospital, including the time the ward was indigent as well as the time he was not indigent, and including the period both before and after demand by the hospital for the cost of his maintenance, and this is true even though this section was ratified after the admission of the ward. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-121. Action to recover costs.**—Immediately upon the fixing of the amount of such actual cost, as herein provided, a cause of action shall accrue therefor in favor of the State for the use of the institution in which such patient, pupil or inmate is receiving training, treatment, maintenance or care, and the State for the use of such institution may sue upon such cause of action in the courts of Wake County, or in the courts of the county in which such institution is located, against said patient, pupil or inmate, or his parents, or either of them, or guardian, trustee, committee, or other person legally responsible therefor, or in whose possession and control there may be any funds or property belonging to either the said pupil, patient or inmate, or to any person upon whom the said patient, pupil, or inmate may be legally dependent, including both parents. (1925, c. 120, s. 5.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-122. No limitation of such action.** — No statute of limitation shall apply to or constitute a defense to any cause of action asserted by any of the above-named institutions for the collection of the cost of care, treatment, training or maintenance, or any or all of these against any person liable therefor, as herein provided, and all statutes containing limitations which might apply to the same are hereby pro tanto repealed, as to all such causes of action or claims, and this section shall apply to all claims, and causes of action for like cost heretofore incurred with such institutions and now remaining unpaid. (1925, c. 120, s. 6.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-123. Power of trustees to admit indigent persons.**—This article shall not be held or construed to interfere with or to limit the authority and power of the management of the boards of trustees or directors of any of the institutions named herein, to make provision for the care, custody, treatment and maintenance of all indigent persons who may be otherwise entitled to admission in any of the said institutions, and as to indigent pupils, inmates and patients, the same provisions now contained in the several statutes relating thereto shall continue in force, but if at any time any of the said indigent patients, pupils or inmates shall succeed to or inherit, or acquire, in any manner, property, or any of the persons named above as legally responsible for the cost of care, treatment and maintenance of the pupil, inmate and patient at the above-named institutions, shall acquire property, or shall otherwise be reputed to be solvent, then each of said institutions shall have the full right and authority to collect and sue for the entire cost and maintenance of such inmate, pupil or patient, without let or hindrance on account of any statute of limitation whatsoever. (1925, c. 120, s. 7.)

Applied in State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ **143-124. Suit by Attorney General; venue.**—At the request of such institution, all actions and suits shall be sued upon and prosecuted by the Attorney General, and such institution shall have the right to elect as to whether it will institute such action in the courts of Wake County or in the courts of the county in which such institution is located. (1925, c. 120, s. 8.)

§ **143-125. Judgment; never barred.**—Any judgment obtained by the State for the use of any of the above-named institutions shall never be barred by any statute of limitation, but shall continue in force, and, at the request of the Attorney General or the superintendent of any of said institutions, an execution shall issue therefor at any time without requiring such institution to revive the said judgment, as is now provided by statute, but in case any judgment debtor, or any fiduciary responsible for the payment thereof, shall make affidavit and file the same with the clerk of the superior court from which such execution is issued, that payments have been made upon the said judgments, then the clerk shall recall said execution and proceed to hear and determine what is the true amount due thereon, if anything, in the same manner as is now required in motions to revive dormant judgments with the right of appeal to the judge of the superior court, as now provided in such motions, and the clerk of the superior court and the judge thereof shall have authority, in their discretion, to require security for the payment of the amount of said judgment pending such appeal. (1925, c. 120, s. 9.)

§ **143-126. Death of inmate; lien on estate.**—In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina. (1925, c. 120, s. 10.)

§ **143-127. Money paid into State treasury.**—All money collected by any institution pursuant to this article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn by the Auditor as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11.)

ARTICLE 8.

Public Building Contracts.

§ **143-128. Separate specifications for building contracts; responsible contractors.**—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, when the entire cost of such work shall exceed fifteen thousand dollars ($15,000.00), must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating and accessories. 2. Plumbing and gas fitting and accessories. 3. Electrical installations. 4. Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the State or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. When the estimated cost of work to be performed in any single subdivision is less than one thousand dollars ($1,000.00), the same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State for the erection, construction or alteration of any building or buildings. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1.)

Cross Reference. — For similar statute applicable to counties and cities, see § 160-280.

Editor's Note. — The 1943 amendment added the words "and accessories" at the end of subdivisions 1 and 2. It also inserted subdivisions 3 and 4.

The 1945 amendment added the second paragraph. The 1949 amendment substituted "fifteen thousand dollars" for "ten thousand dollars" in the first sentence of the first paragraph and added the last sentence thereto.

For comment on this section, see 4 N. C. Law Rev. 14.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.—No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500.00) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than one thousand dollars ($1,000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision: Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than two thousand dollars ($2,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other subdivision wherein there is no newspaper published and the estimated cost of the contract is less than two thousand dollars ($2,000.00), such advertisement may be either published in some newspaper as required herein or posted at the courthouse door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bid is in excess of the funds available for such purpose, such board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned and may award such contract to such bidder if such bidder will agree to perform the same, without making any substantial changes in the plans and specifications, at a sum within the funds available therefor. If the contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, the said letting and make such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation, in an amount equal to not less than five per cent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the State, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town or other subdivision of the State may enter into any contract with the United States of America or any agency thereof for the purchase, lease or other acquisition of any apparatus, supplies, materials or equipment without regard to the provisions of this section which require:

(1) The posting of notices or public advertising for proposals or bids.
(2) The inviting or receiving of competitive bids.
(3) The delivery of purchases before payment.
(4) The posting of deposits of bonds or other sureties.
(5) The execution of written contracts.

The Director of the Division of Purchase and Contract, the governing board of any county, city, town or subdivision may designate any officeholder or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by the United States of America, or any agency thereof, and may authorize such person to make any partial or down payment or payment in full that may be required by regulations of the United States of America or any agency thereof in connection with such bid or bids. (1931, c. 338, s. 1; 1933, c. 50; 1933, c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2.)

Local Modifiction. — Guilford: 1949, c. 440; Transylvania: 1947, c. 828 (temporary); City of Greensboro: 1949, c. 440; 1951, c. 707, ss. 1, 5; Durham and city of Durham: 1951, c. 506; City of Wilmington: 1951, c. 881; City of Winston-Salem: 1951, c. 224.

Editor's Note. — The 1945 amendment added the last two paragraphs. The 1949 amendment made changes in the seventh paragraph. The 1951 amendment inserted the words "requiring the estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500.00)" in the first paragraph and rewrote the seventh paragraph.

For a brief comment on the 1949 amendment, see 27 N. C. Law Rev. 423.

The purpose of this section is to prevent favoritism, corruption, fraud and imposition in the awarding of public contracts by giving notice to the prospective bidders and thus assuring competition, which in turn guarantees fair play and reasonable prices in contracts involving the expenditure of a substantial amount of public money. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

The requirements of this section are mandatory, and a contract made in contravention of such requirements is ultra vires and void. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

Public Laws 1903, c. 305, does not authorize the town of Louisburg to contract for machinery for its water and sewer system and electric light plant in a sum in excess of $1,000 without submitting the same to competitive bidding after due advertisement. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

This section applies only to contracts where the bidders have the right to name the price for which they are willing to furnish supplies and materials. It has no application whatever to a contract between a municipality and a public utility, where there can be no competition between bidders because the municipality or the State has the power and authority to fix the price of the service to be rendered or the commodity to be furnished. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Emergency Defined.—The meaning of the word "emergency" within the exception to this section is not susceptible of precise definition and each case must, to some extent, stand upon its own bottom, but in any event the term connotes an immediate and present condition and not one which may or may not arise in the future or one that is apt to arise or may be expected to arise. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

The terms "apparatus," "materials" and "equipment," used in this section, denote particular types of tangible personal property and could not be construed to include electric current. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

The word "supplies" in the section is used in conjunction with the term "apparatus," "materials" and "equipment," and its meaning is confined to property of like kind and nature. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Contract Made in Violation of This Section Is Void.—A contract involving more than $1,000.00 let without advertisement as required by this section is void, and the contractor may not recover on it. Hawkins v. Dallas, 229 N. C. 561, 50 S. E. (2d) 561 (1948).

But Contractor May Recover on Quantum Meruit.—Where the work under the contract has been actually done and accepted, the county, city or town is bound on a quantum meruit for the reasonable and just value of the work and labor done and material furnished. Hawkins v. Dallas, 229 N. C. 561, 50 S. E. (2d) 561 (1948).

Judicial Review of Finding of Emergency.—The provision of this section that a municipality may let a contract for expenditures in excess of $1,000 without advertisement "in cases of special emergency" constitutes an exception to the general rule, and the commissioners of a municipality may not declare an emergency where none exists and thus defeat the law, nor is such finding by the municipal board upon competent evidence conclusive on the courts, but the courts may review the evidence and determine whether an emergency as contemplated by the statute does in fact exist. Raynor v. Louisburg Com'rs, 220 N. C. 348, 17 S. E. (2d) 495 (1941).

§ **143-130. Allowance for convict labor must be specified.**—In cases where the board or governing body may furnish convict or other labor to the contractor, manufacturer or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2.)

§ **143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials or equipment, involving the expenditure of public money in the amount of two hundred dollars ($200.00) or more but less than one thousand dollars ($1,000.00), made by any officer, department, board or commission of any county, city, town or other subdivision of this State, when practical, shall be awarded to the lowest responsible bidder after informal bids have been secured, and it shall be the duty of such officer, department, board or commission to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2.)

Local Modification.—Durham and city of Durham: 1951, c. 506; Guilford: 1947, c. 78, s. 3; City of Greensboro: 1951, c. 707, s. 5; City of Wilmington: 1951, c. 881.

§ **143-132. Minimum number of bids for public contracts.**—No contracts to which § 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective line of endeavor, when the estimated cost of the project exceeds the sum of fifteen thousand dollars ($15,000.00); however, this section shall not apply to contracts which are negotiated as provided for in § 143-129. (1931, c. 291, s. 3; 1951, c. 1104, s. 3.)

Editor's Note. — The 1951 amendment rewrote this section.

§ **143-133. No evasion permitted.**—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3.)

§ **143-134. Highway and Prison Department excepted.**—This article shall not apply to the State Highway and Prison Department of the State of North Carolina. (1933, c. 400, s. 3-A.)

§ **143-135. Limitation of application of article.**—This article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of fifteen thousand dollars ($15,000.00), if the repairs, completed project, building, or structure are performed or accomplished by or through duly elected officers or agents. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6.)

Local Modification.—For temporary act applicable to Duplin, Johnston, Lincoln, Nash, New Hanover, Swain, Wake and Wayne counties, see Session Laws 1947, c. 1038.

Editor's Note. — The 1949 and 1951 amendments rewrote this section.

Temporary Amendment Relating to Hospitals Board of Control. — Session Laws 1951, c. 37, ratified February 8, 1951, amended this section by adding at the end thereof a new sentence reading as follows: "From and after the ratification of this act and until the first day of January 1953, this article shall not apply to the North Carolina Hospitals Board of Control in the repair, erection and completion of projects, buildings or structures at Camp Butner where the total cost of any such project, building or structure does not exceed the sum of $50,000.00."

§ **143-135.1. State buildings exempt from municipal building requirements; consideration of recommendations by municipalities.** — Buildings constructed by the State of North Carolina or any agency or institution of the State under plans and specifications approved by the Budget Bureau shall not be subject to inspection by any municipal authorities and to municipal building codes and requirements. Inspection fees fixed by municipalities shall not be applicable to such construction, except where inspection is requested by the owning agency. Municipal authorities may, however, inspect any plans or specifications for any such construction and all recommendations made by them with respect thereto shall be given careful consideration by the Budget Bureau. (1951, c. 1104, s. 4.)

Article 9.

Building Code.

§ **143-136. North Carolina Building Code.**—This article shall be known and may be cited as the North Carolina Building Code. (1933, c. 392, s. 1.)

§ **143-137. Purpose of article.**—It is the purpose of this article to protect life, health, and property and all its provisions shall be construed liberally to that end. (1933, c. 392, s. 2.)

§ **143-138. Administration by Insurance Commissioner; duties of State Board of Health.**—It shall be the duty of the Insurance Commissioner or his deputy or deputies in co-operation with local officials in accordance with §§ 160-115 to 160-123, inclusive, to enforce the Building Code hereinafter ratified and adopted, and all rules and regulations which the Building Code Council is authorized to promulgate in modification or addition to said Building Code under the authority of this article, and further, in co-operation with local authorities, to enforce ordinances of municipal corporations relating to a building code or building rules and regulations: Provided, however, it shall be the duty of the State Board of Health, instead of the duty of the Insurance Commissioner, to enforce all provisions of the Building Code hereinafter designated and all other rules and regulations duly promulgated by the Building Code Council relating to plumbing where such plumbing regulations are not otherwise prescribed by local ordinance or rules and regulations of county health boards. (1933, c. 392, s. 3; 1941, c. 280, s. 1.)

Editor's Note. — The 1941 amendment rewrote this section. For comment on the amendment, see 19 N. C. Law Rev. 457.

§ **143-139. Building Code Council created; powers and duties; application of Building Code.**—There is hereby created a Building Code Council which shall consist of the following members registered in accordance with the laws of North Carolina where registration laws apply: One architect, one general contractor, one structural engineer, one plumbing and heating contractor, and one representative of organized labor. Members of the Building Code Council shall be appointed or removed by the Governor. The terms of office shall be as follows: One architect five years, one general contractor four years, one structural engineer three years, one plumbing and heating contractor two years and one representative of organized labor one year. Vacancies caused by expiration of term of office shall be filled by the Governor and appointments made for a period of five years. Vacancies caused by resignation or otherwise shall be filled by the Governor for the unexpired term of the person leaving office.

Within thirty days after the passage and publication of this article, the Building Code Council shall meet and organize and shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties and it shall keep an accurate record of all its proceedings. Subject to the limitations hereinafter set forth, the said Building Code Council is authorized and empowered to establish reasonable and suitable classifications of buildings, both as to use and occupancy; to determine general building restrictions as to location, height and floor areas; to promulgate rules for the lighting and ventilation of buildings; means of egress therefrom; construction thereof and precautions to be taken during such construction; materials, loads and stresses of construction; chimneys and heating appliances and elevators; plumbing, heating, electrical control and protection; and to adopt such other rules and regulations as may be reasonably necessary to effectuate the purposes of this article: Provided, however, the said Building Code Council shall not establish any standard or adopt or promulgate any rule, regulation, classification, limitation or restriction more rigid, exacting or stringent in its requirements than is authorized in the "North Carolina Building Code" adopted and promulgated by said Council in the year one thousand nine hundred and thirty-six and published in full in August of that year in a printed volume as an official publication of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the said volume being known and designated as the "North Carolina Building Code, prepared by the North Carolina Building Code Council" and also known and identified as "Bulletin Number Ten, Engineering Experiment Station, State College Station, Raleigh." The provisions of said "North Carolina Building Code" so published are hereby in all respects ratified and adopted and shall continue in full force and effect unless and until they may be modified as hereinafter authorized: Provided, further, the said Building Code Council may, subject to the approval of the Insurance Commissioner, promulgate rules and regulations which shall have the effect of establishing requirements less rigid and less stringent than those set forth in said "North Carolina Building Code"; Provided, further, any municipal corporation may adopt a building code or building rules and regulations which are more rigid, stringent and exacting than the "North Carolina Building Code" referred to above as the same is now adopted or as it may be hereafter modified pursuant to the provisions of this article. (1933, c. 392, s. 4; 1941, c. 280, s. 2.)

Local Modification.—Durham and City of Durham: 1945, c. 463.

Editor's Note. — The 1941 amendment added the part of the second paragraph beginning with the second sentence.

§ **143-140. Appeals to Council.**—An appeal from the decision of the Insurance Commissioner upon any matter affecting the Building Code may be taken to the Building Code Council as hereinafter provided. (1933, c. 392, s. 5.)

§ **143-141. Compensation; appeals to Council and to courts; buildings to meet Code standards.**—The members of the Building Code Council may each receive five dollars per day as compensation for the time given in the performance of his duty and may be reimbursed for compensation and actual traveling expenses from funds of the organization which he represents.

When the Insurance Commissioner shall reject or refuse to approve the mode or manner of construction proposed to be followed, or materials to be used in the erection or alteration of any building or structure, or when it is claimed that the provisions of this Code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, the owner of such building or structure, or his duly authorized agent, may demand that the decision of the Insurance Commissioner be reviewed by the chairman and two or more members of the Building Code Council who are qualified to render a fair and impartial decision where the amount in question shall exceed the sum of $1,000.00. The members best qualified in the opinion of the chairman shall be selected to review the decision of the Insurance Commissioner.

After a review of the decision of the Insurance Commissioner the chairman shall forward the findings and recommendations to the Insurance Commissioner immediately. It is understood that the Building Code Council shall serve in an advisory capacity only and that the final decision and responsibility for such decision shall rest upon the Insurance Commissioner: Provided, nothing in this article shall prohibit the owner his right of appeal to the superior courts.

It shall be the duty of the Council not only to make recommendations to the Insurance Commissioner relative to the proper construction of the pertinent provisions of the Building Code but it shall also recommend that he shall allow materials and methods of construction other than those required by the Building Code to be used, when in its opinion such other material and methods of construction are as good as those required by the Code, and for this purpose the requirements of the Building Code as to such matters shall be considered simply as a standard to which construction shall conform. (1933, c. 392, s. 6.)

§ 143-142. Hearings before Insurance Commissioner as to questions under law or Building Code, etc.—Any person desiring to raise any question under this article or under the "North Carolina Building Code" or any rule or regulation promulgated by the Building Code Council shall be entitled to a full hearing before the Insurance Commissioner, and upon request in writing by any such person, the Insurance Commissioner shall appoint a time for the hearing, giving such person reasonable notice thereof. The Insurance Commissioner shall conduct a full and complete hearing of the matters in controversy and make a determination thereof. Any person affected by any decision of the Insurance Commissioner upon such matters may, either before or after appeal to the Building Council as provided for in § 143-141, proceed against the Insurance Commissioner in the Superior Court of Wake County, to enjoin the enforcement of the ruling or decision. In any such injunction proceeding the trial of all matters which may have been involved in the hearing before the Insurance Commissioner shall be de novo but the decision and ruling of the Commissioner shall be prima facie correct and valid and the burden of proof shall be on the party attacking such decision. The provisions of this section shall not deprive any person of any other right of action or appeal which he may have and shall not limit any party to the assertion of said right by injunction as herein permitted: Provided, however, that where the question raised relates to any provision, regulation, ruling or decision regarding plumbing, the hearing shall be held before the State Board of Health instead of the Insurance Commissioner; but otherwise the procedure, rights and remedies in such cases shall be as outlined in this section. (1941, c. 280, s. 3.)

Cross Reference.—As to injunction generally, see § 1-485 et seq.

§ 143-143. Violation of article subjects offender to fine.—If any employer, owner or other person shall violate any of the provisions of this article, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined within the time prescribed by the Insurance Commissioner or his deputy or shall fail, neglect, or refuse, to obey any lawful order given or made by the Insurance Commissioner, for each such violation, failure, or refusal, such employer, owner or other person upon conviction thereof shall be fined in any sum not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each offense. Each seven days' neglect shall constitute a separate and distinct offense. (1933, c. 392, s. 7.)

Article 10.

Various Powers and Regulations.

§ **143-144. State institutions may exercise eminent domain.**—Whenever the directors or managers of any State institution find it necessary to acquire lands in order to carry out the purposes of the institution, or to acquire lands, rights of way, or easements for the purposes of obtaining and protecting water supplies, or for constructing and maintaining dams, reservoirs, standpipes, pipe lines, flumes, or conduits for water-supply purposes, and are unable to purchase the same from the owners at a reasonable price, or are unable to obtain a good and sufficient title therefor by purchase from the owners, then such State institution may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purposes by condemnation in the manner prescribed by law under the chapter on eminent domain. (Rev., s. 3062; 1917, cc. 51, 132; C. S., s. 7522.)

Cross Reference.—For chapter on Eminent Domain, see chapter 40, § 40-1 et seq.

§ **143-145. Entry on land to lay water pipes.**—For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the State may enter upon the lands through which they may desire to conduct their pipes for such purpose, and lay them under ground, and they, at all times, shall have the right to enter upon such lands for the purpose of keeping the water line in repair and do all things necessary to that end. (1893, c. 63, s. 1; Rev., s. 3061; 1911, c. 62, s. 26; C. S., s. 7523.)

§ **143-146. Execution of deeds for State-owned lands.** — The Governor of the State is hereby authorized and empowered to execute a deed in the manner provided by § 143-148 to any land which is not needed for purposes of the State government, the title to which is vested in the State, or any State institution, department or agency upon the application of the trustees or directors of such institution or the board, commission or State officer having such property in charge. The application shall show that such conveyance is for the best interests of the State or such institution, department or agency and shall be approved by the Council of State.

All conveyances heretofore made by the Governor, attested by the Secretary of State and authorized by the Council of State, in the manner provided by § 143-148 of any lands, the title to which was vested in the State for the use of any State institution, department or agency or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C. S., s. 7524; 1951, c. 18.)

Editor's Note. — The 1951 amendment, which rewrote this section and added the second paragraph, became effective February 1, 1951.

§ **143-147. Method of alienation of real property held by any State agency.** — Wherever the power and authority to convey real property held or owned by any State institution, agency, board, commission, person, or corporation that exercises State functions, have been or may be hereafter given by the

General Assembly, then the method and manner of conveying the same shall be as herein provided. (1929, c. 143, s. 1.)

Cross Reference. — As to provision for approval of sale of, or encumbrances on, property of corporations in which the State is interested, see § 124-5.

§ **143-148. Execution; signature; attestation; seal.**—Such conveyance shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, and signed in the name of the State of North Carolina by the Governor and attested by the Secretary of State, and the great seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2.)

§ **143-149. Admission to registration in counties.**—Such conveyances shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3.)

§ **143-150. Exclusive method of conveying such property.**—The manner and method of conveying real property in the State of North Carolina herein set out shall be the exclusive and only method of conveying same. Any conveyance thereof by any other person and/or executed in any other manner or method shall not be effectual to convey the State's interest or estate in such real property. (1929, c. 143, s. 4.)

§ **143-151. Grant of easements to public service corporations.**—The directors of the various State institutions are authorized and empowered to grant privileges and easements to individuals or companies to run telegraph, telephone, or power transmission lines over lands belonging to such institutions, when in their judgment it is right and proper to do so, and subject to such terms and conditions as they may impose, and subject in each case to the approval of the Attorney General of the State. (1909, c. 484; C. S., s. 7525.)

§ **143-152. Injury to water supply misdemeanor.**—If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1893, c. 63, s. 3; Rev., s. 3458; C. S., s. 7526.)

§ **143-153. Keeping swine near State institutions; penalty.**—On the petition of a majority of the legal voters living within a radius of one-quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one-quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten nor more than fifty dollars. (1909, c. 706; C. S., s. 7527.)

§ **143-154. Expenditures for departments and institutions; accounting and warrants.** — All expenditures of any character allowed by the General Assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the State Auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C. S., s. 7528.)

§ **143-155. Institutions to file monthly statements with Auditor.**—On the fifteenth of each month it shall be the duty of the head of each State institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the State Auditor on blanks to be prepared and furnished to him by the Auditor. (1911, c. 99; C. S., s. 7529.)

§ **143-156. Certain institutions to report to Governor and General Assembly.**—It shall be the duty of the boards of directors, managers, or trustees of the several State institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the State Prison to submit their respective reports to the Governor, to be transmitted by him with his message to the General Assembly. (1883, c. 60, ss. 2, 4; Rev., s. 5373; C. S., s. 7530.)

§ **143-157. Reports of departments and institutions; investigations and audits.**—All State departments and State institutions shall make reports to the Governor from time to time as may be required by him, and the Governor is empowered to have all departments of the State government and State institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C. S., s. 7531.)

§ **143-158. Special investigations.**—At any time, upon complaint made to him or upon his own motion, the Governor may appoint a special commission to investigate any State department or State institution, which commission shall have power to subpœna witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the Governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars. (1917, c. 58, s. 8; C. S., s. 7532.)

§ **143-159. Governor given authority to direct investigation.**—The Governor is hereby authorized and empowered to call upon and direct the Attorney General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ **143-160. Conduct of investigation.** — Whenever called upon and requested by the Governor as set out in § 143-159, the Attorney General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpœnas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpœnas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpœnaed to attend any hearing before the Attorney General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the superior court. (1927, c. 234, s. 2.)

§ **143-161. Stenographic record of proceedings.**—A stenographic record of the proceedings had in such investigation shall be taken and copy thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ **143-162. State institutions to mail copies of reports.**—Each State institution required by law to file biennial reports with the Governor and General Assembly shall prepare, print and mail copies thereof to each of the members of the General Assembly-elect on or before the twentieth day of November preceding the meeting of the General Assembly. Said biennial reports shall embrace all receipts and disbursements up to the thirtieth of June preceding the election of said General Assembly. Any officer of a State institution whose duty it is to make these reports, failing to file said biennial report, unless an extension of time is given by the Governor, shall be subject to dismissal from office. (1923, c. 197, ss. 1, 3; C. S., s. 7534(a).)

ARTICLE 11.

Revenue Bonds and Governmental Aid.

§ **143-163. State agencies may issue bonds to finance certain public undertakings.**—The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the Governor of North Carolina, with the approval of the Council of State, are hereby authorized to issue bonds of the several departments, agencies or commissions of the State, in such sum or sums, not to exceed in the aggregate two million dollars, at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding thirty years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no State department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; Provided, further, that no State department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June first, one thousand nine hundred forty-one. (1935, c. 479, s. 1; Ex. Sess. 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

Editor's Note. — The amendments changed the date in the proviso.

§ **143-164. Acceptance of federal loans and grants permitted.**—The State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the Governor of North Carolina, with the approval of the Council of State. (1935, c. 479, s. 2.)

§ **143-165. Approval by Governor and Council of State necessary; covenants in resolutions authorizing bonds.**—The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the Governor of North Carolina, which action shall be approved by the Council of State before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to (a) the use and disposition of revenue of the undertaking for which the said bonds are to be issued, (b) the pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor, (c) the operation and maintenance of such undertaking, (d) the insurance to be carried thereon and the use and disposition of the insurance moneys, (e) the fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor, (f) provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid: Provided, however, that the credit of the State of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the State shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess. 1936, c. 2, s. 2.)

Editor's Note. — The 1936 amendment added the second paragraph.

Article 12.

Law Enforcement Officers' Benefit and Retirement Fund.

§ **143-166. Law Enforcement Officers' Benefit and Retirement Fund.** —In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, two dollars ($2.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this article. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected: Provided, however, that the costs assessed under this article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served; provided no part of said costs or assessments shall be paid by any county or municipality.

(a) The moneys so received shall annually be set up in a special fund to be known as "The Law Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund," which shall consist of the State Auditor, who shall be chairman ex officio of said Board, the State Treasurer, the State Insurance Commissioner, and four members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law enforcement officers as hereinafter defined, employed by the State, and one representing the public at large. No member of said Board of Commissioners shall receive any salary, compensation or expenses other than a per diem of not exceeding seven dollars ($7.00) for each day's attendance at duly and regularly called and held meetings of the Commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said Board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex officio members shall not receive any per diem.

(c) As soon as is practicable after March 13, 1941, and after the appointment of the four members herein authorized to be appointed by the Governor, the organization of said Board shall be perfected by the selection from its members of a vice-chairman, and secretary, to serve for a term of one year and until their successors shall have been elected and qualified, and by the selection by the Board, by a majority vote, of such employees as in the opinion of the Board, with the approval of the Governor, may be necessary for the proper handling of the business of the Board of Commissioners, such employee or such employees to hold office at the will of the Board of Commissioners. No employee of the Board of Commissioners shall during the period of such employment or during any leave of absence therefrom hold any public office, be a candidate for any public office, or engage in any political activity whatsoever for or on behalf of any candidate for public office, either in the primary or election. The violation of the restriction herein contained against political activity shall subject such employee to immediate discharge; and any such employee who shall use any funds of the Commission for political purposes or shall incur any expense whatsoever in connection with any political activity, paid or payable out of the funds of said Commission, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as provided by law in the case of misdemeanors. Nothing herein contained shall prevent any employee from exercising his individual right of franchise in any primary or election. Nothing in this section shall affect the right of any employee of said Commission who is at present a member of the General Assembly from continuing as such member for the duration of such present term.

(d) The said Board of Commissioners shall have control of all payments to be made from such Fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Commissioners shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the catagories of law enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Commissioners as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Commissioners by the secretary, records which shall give a complete history and record of all actions of the Board of Commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Commissioners shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such Fund. There shall be annually made by the State Auditor's Department a complete audit and examination of the receipts and the disbursements of the Board of Commissioners herein created.

(g) The Board of Commissioners of the said Fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said Fund in accordance with the purposes of this article. And the Board shall have the authority to invest any funds not immediately needed in any securities which the State Sinking Fund Commission may be authorized to invest in, or in certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of five thousand ($5,000.00) dollars in any one bank or trust company, or in the shares of federal savings and loan associations and State chartered building and loan associations not to exceed five thousand ($5,000.00) dollars in any one of such associations; provided that no such funds may be so invested in a State chartered building and loan association unless and until authorized by the Insurance Commissioner.

(h) In case the amount derived from the different sources mentioned and included in this article shall not be sufficient at any time to enable the said Board of Commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said Fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the Fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board: Provided, that any officer so voluntarily contributing to the Fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the Fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the Retirement Fund herein provided for, shall voluntarily pay into the Fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the Fund for credit to the individual account of such member, either or both: (1) an amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year five per cent (5%) of such member's compensation; and (2) a sum not to exceed the value of prior service of such member as determined by the Board of Commissioners; such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law enforcement officer an amount equal to the value of his prior service and the cost of matching his contribution. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law Enforcement Officers' Benefit and Retirement Fund.

(j) All officers who have contributed to the Retirement Fund herein provided for, and who have had twenty years' continuous service as such peace officer in this State, shall be eligible for retirement benefits and the Board of Commissioners is authorized, in its discretion under rules and regulations promulgated by it, to determine when an officer has completed twenty years of continuous service.

(k) The Board of Commissioners is authorized and empowered in its discretion, upon a finding that any officer who has contributed to the Retirement Fund herein provided for has been discharged from the service through no fault of his own, to reimburse from the Fund herein created an amount not to exceed that which such officer has contributed to the Fund under the provisions of subsection (i) of this section.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this article.

(m) Law enforcement officers in the meaning of this article shall include sheriffs, deputy sheriffs, constables, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, prison foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency, and all other officers of this State, or of any political subdivision thereof, who are clothed with the power of arrest and whose duties are primarily in enforcing the criminal laws of the State.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the Treasurer of the State of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No State employees participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, chapter 25, known as "The Teachers' and State Employees' Retirement System Act."

(p) No State employee participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by "The Teachers' and State Employees' Retirement System Act," § 135-1 et seq. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; 1939, c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382.)

Cross Reference. — For provision relating to membership of highway patrolmen, see § 135-3.1.

Editor's Note. — The 1939 amendments rewrote this section.

The first 1941 amendment added the last sentence of subsection (g) and added at the end of subsection (m) the words "and whose duties are primarily in enforcing the criminal laws of the State." The second 1941 amendment made changes in the first paragraph of the section and in subsections (a), (b) and (c), and added subsection (o).

The 1943 amendment increased the additional cost mentioned in the first paragraph from one dollar to two dollars and added the proviso to the said paragraph. Prior to the amendment part of the moneys mentioned in subsection (a) was paid into the general fund of the State.

The 1949 amendment added the last two paragraphs of subsection (i), and the 1951 amendment added the last sentence of subsection (d).

Policeman Excluded from Local Governmental Employees' Retirement System. —Policeman, who is entitled to the benefits of this section, is not eligible to become a member of the Local Governmental Employees' Retirement System, set out in § 128-24(2). Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Section Not Intended to Compensate Officers Making Arrests.—The additional cost in criminal cases provided by this section is not intended to be used to compensate the officers who make the arrests or participate in the prosecution, but is paid to the State Treasurer and by him disbursed for the purposes of the Law Enforcement Officers' Retirement Act. Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

ARTICLE 13.

Publications.

§ **143-167**: Transferred to § 147-54.1 by Session Laws 1943, c. 543.

§ **143-168. Reports and publications; conciseness; Governor and Attorney General to prescribe scope of reports.**—The reports and publications of every kind now authorized or required to be printed by the several State departments and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of the department. The details of the work of the departments shall not be printed when not necessary to an intelligent understanding of the work of the departments, but totals and results shall be tabulated and printed in said reports. The Governor and the Attorney General shall confer with the various departments and prescribe the scope of the matter to be published in any report now prescribed, required, or permitted, to the end that unnecessary matter may be eliminated. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C. S., s. 7294; 1931, c. 261, s. 3.)

§ **143-169. Departmental reports to legislature; number printed.**—Not to exceed eight hundred copies each of the annual or biennial reports of the several departments of the State government shall be printed, a copy of each of these to be furnished to each of the members and officers of the General Assembly, one copy to each State officer, and five copies to the State Librarian for filing, the remaining copies to be distributed in the discretion of the officer making such report: Provided, that the Division of Purchase and Contract may permit the publication of a greater number of reports if in its judgment the same are necessary. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15.)

§ **143-170. Reports of departments to be printed biennially.** — All laws requiring reports to be made, published, and printed by any department oftener than once in two years are hereby amended to the extent that the report of any department is required or permitted to be printed only once in any biennial period: Provided, that this section shall not apply to the report of the State Auditor and of the State Treasurer. (1917, c. 202, s. 1; C. S., s. 7534.)

Article 14.

State Planning Board.

§ **143-171. Board established as an advisory agency of State.**—The State Planning Board, as provided for by chapter four hundred eighty-eight of the Public Laws of one thousand nine hundred thirty-five is hereby established as an advisory agency of the State, under the direction of the Governor and as more fully set forth hereinafter. (1937, c. 345, s. 1.)

§ **143-172. Membership; terms of office; expenses.**—The State Planning Board shall consist of nine members, appointed by the Governor, as follows: Five members to be chosen from State officers or heads of departments or boards, one of whom shall be the director of the Department of Conservation and Development; at least one representative from the University of North Carolina, and the remaining members to be chosen from among the other citizens of the State. The members of the Board shall hold office during the pleasure of the Governor, and all vacancies shall be filled by the Governor, when and as they may occur. The members of the said Board shall serve without pay, but they shall be allowed such reasonable expenses as are authorized by the Board and incurred in the immediate discharge of their duties, to be paid out of such funds as may be available. (1937, c. 345, s. 2.)

§ **143-173. Chairman and secretary; rules and regulations; employees; expenditures; office space and equipment; special surveys and studies.** — The Governor shall appoint one member of the Board to serve as chairman. The Board shall elect one member to serve as secretary of the Board. The Board shall adopt such rules as it may deem proper for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The Board may appoint such employees as it may deem necessary for its work and fix their compensations. The Board may also contract with individuals or corporations for such special services as the Board may require. The expenditures of the Board from funds of the State shall be limited to the amounts appropriated by the General Assembly for the specific purpose, or amounts appropriated from the emergency fund. The Board shall be supplied with necessary office space and necessary equipment. Upon request of the Board, the Governor may, from time to time, for the purpose of special surveys or studies under the direction of the Board, assign or detail to the Board any member of any State department or bureau or agency, or may direct any such department, bureau or agency to make special surveys and studies as requested by the State Planning Board. (1937, c. 345, s. 3.)

§ **143-174. Functions of Board.** — It shall be the function and duty of the State Planning Board to make studies of any matters relating to the general development of the State or regions within the State or areas of which the State is a part, with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and efficient development of the State. Upon the basis of such studies, and in accordance with the present and future needs and resources, the Board shall present, from time to time, reports, plans, maps, charts, descriptive matter and recommendations relating to such conservation, wise use and planned development of the material and human resources of North Carolina as will best promote the health, safety, morals, order, convenience, prosperity and welfare of the people of the State. (1937, c. 345, s. 4.)

§ **143-175. Adoption of plans and recommendations; publicity program; co-operation with other agencies; advice and information relative to State planning; proposed legislation.** — The State Planning Board may, from time to time, adopt, in whole or in part, such plans and recommendations as, in its judgment, may be deemed wise and proper; and may, from time to time, alter, amend and add to such plans; may, in the interest of promoting understanding of and compliance with their recommendations, publish and distribute such plans and recommendations and may employ such means of publicity and education as it may determine; may confer and co-operate with other agencies, federal, state, regional, county or municipal in the accomplishment of common purposes; may, upon request or at its own initiative, furnish advice or information to the Governor, the General Assembly, State, county, and municipal officers or departments on matters relating to State planning; and may prepare and submit drafts of legislation for the carrying out of any plans they may adopt. (1937, c. 345, s. 5.)

§ **143-176. Public boards and officials directed to supply information; general powers.**—All public boards and officials shall, upon request, furnish to the State Planning Board such available information as it may require for its work. In general, the Board shall have such powers as may be appropriate, to enable it to fulfill its functions and duties, to promote State planning and to carry out the purposes of this article. (1937, c. 345, s. 6.)

Editor's Note. — This section would seem to imply the power to make rules and regulations necessary for the purposes of the statute. 15 N. C. Law Rev. 523.

§ **143-177. Acceptance and disbursement of contributions.** — The State Planning Board is authorized, in the name of the State, to accept and disburse, under the approval of the Director of the Budget, any contributions that may be available for the work in which it is engaged, by any State or federal agency or private or public endowment. (1937, c. 345, s. 7.)

§ **143-177.1. Allocation of funds from contingency and emergency fund.**—The Governor and the Council of State are hereby authorized to allocate from the contingency and emergency fund to the State Planning Board, provided for under the provisions of this article, funds in such amount and at such time or times as they may find actually necessary for the reasonable fulfillment of the functions of such Board within the provision of the statute creating the Board. (1943, c. 355.)

ARTICLE 15.

Commission on Interstate Co-operation.

§ **143-178. Senate members on Interstate Co-operation.**—The President of the Senate at each regular session of the General Assembly shall designate five members of the Senate as Senate members of the Commission on Interstate Co-operation. (1937, c. 374, s. 1; 1947, c. 578, s. 1.)

Editor's Note. — The 1947 amendment rewrote this section.

§ **143-179. House members on Interstate Co-operation.**—The speaker of the House of Representatives at each regular session of the General Assembly shall designate five members of the House as House members of the Commission on Interstate Co-operation. (1937, c. 374, s. 2; 1947, c. 578, s. 2.)

Editor's Note. — The 1947 amendment rewrote this section.

§ **143-180. Governor's Committee on Interstate Co-operation.** — There is hereby established a committee of administrative officials and employees of this State, to be officially known as the Governor's Committee on Interstate Co-operation, and to consist of five members. Its members shall be: the Budget Director or the corresponding official of this State, ex officio; the Attorney General, ex officio; the chief of the staff of the State Planning Board or the corresponding official of this State, ex officio, and two other administrative officials or employees to be designated by the Governor. If there is uncertainty as to the identity of any of the ex officio members of this Committee, the Governor shall determine the question, and his determination and designation shall be conclusive. The Governor shall appoint one of the five members of this Committee as its chairman. In addition to the regular members, the Governor shall be ex officio an honorary non-voting member of this Committee. The Governor may, however, in his discretion, appoint one additional member of the said Commission who is not an administrative official. (1937, c. 374, s. 3; 1949, c. 1065.)

Editor's Note. — The 1949 amendment added the last sentence.

§ **143-181. North Carolina Commission on Interstate Co-operation.** —There is hereby established the North Carolina Commission on Interstate Co-operation. This Commission shall be composed of fifteen regular members, namely:

The five members named by the President of the Senate;

The five members of the House designated by the Speaker, and

The five members of the Governor's Committee on Interstate Co-operation.

The Governor, the President of the Senate and the Speaker of the House of Representatives shall be ex officio honorary non-voting members of this Commission. Said Commission shall meet before the adjournment of each regular session of the General Assembly in the city of Raleigh and at such meeting organize by the election of a chairman and secretary thereof. (1937, c. 374, s. 4; 1947, c. 578, s. 3.)

Editor's Note. — The 1947 amendment rewrote the last sentence and made other changes.

§ **143-182. Members constituting Senate and House council of American Legislators' Association.**—The said members of the Commission named by the President of the Senate and the Speaker of the House shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this State the Senate council and House council of the American Legislators' Association. The incumbency of each administrative member of this Commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (1937, c. 374, s. 5; 1947, c. 578, s. 4.)

Editor's Note. — The 1947 amendment struck out the words "standing committee of the Senate and the said standing committee of the house of representatives" near the beginning of the section and substituted in lieu thereof the words "members of the Commission named by the President of the Senate and the Speaker of the House."

§ **143-183. Functions and purpose of Commission.** — It shall be the function of this Commission:

(1) To carry forward the participation of this State as a member of the Council of State Governments.

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(3) To endeavor to advance co-operation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal co-operation of governmental offices with one another,

(e) The personal co-operation of governmental officials and employees with one another, individually,

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose. (1937, c. 374, s. 6.)

§ **143-184. Appointment of delegations and committees; persons eligible for membership; advisory boards.**—The Commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the Commission in obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the chairman of the Commission. State officials or employees who are not members of the Commission on Interstate Co-operation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this State shall not be eligible. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (1937, c. 374, s. 7.)

§ **143-185. Reports to the Governor and General Assembly; expenses; employment of secretary, etc.**—The Commission shall report to the Governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this article. The Commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the Council of State Governments, participate with other states in maintaining the said Council's district and central secretariats, and its other governmental services. The Governor and the Council of State are authorized to allocate from the contingency and emergency fund such sums as they shall find proper to provide for the necessary expenses which said Commission is authorized to incur, as hereinbefore provided. (1937, c. 374, s. 8; 1947, c. 578, s. 5.)

Editor's Note. — The 1947 amendment added the last sentence.

§ **143-186. Names of committees designated.**—The committees and the Commission established by this article shall be informally known, respectively, as the Senate Co-operation Committee, the House Co-operation Committee, the Governor's Co-operation Committee and the North Carolina Co-operation Commission. (1937, c. 374, s. 9.)

§ **143-187. Council of State Governments a joint governmental agency.** — The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which co-operate through it. (1937, c. 374, s. 10.)

§ **143-188. Secretary of State to communicate text of measure to officials and governing bodies of other states.**—The Secretary of State shall forthwith communicate the text of this article to the Governor, to the senate, and to the house of representatives of each of the other states of the Union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this article, thus establishing a similar commission, and thus joining with this State in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. (1937, c. 374, s. 11.)

ARTICLE 16.

Spanish-American War Relief Fund.

§ **143-189. Governor to be trustee of Fund.**—Whereas, of a fund known as the "Interim Pay Fund," and as the "Spanish-American War Relief Fund," appropriated by the United States government, for pay of veterans for time served between date of their call for duty and their muster into service of the United States, during the Spanish-American War in 1898, there remains in possession of the State of North Carolina, and unclaimed by veterans of said War, a balance amounting to seventeen thousand six hundred thirty-seven dollars and forty-six cents, as of January 4, 1933; and Whereas, for many years there have been few claimants for any part of this Fund, with the probability that the number of claims against same will become less and less, and more remote;

The Governor of the State shall be the trustee of said Interim Pay Fund, and shall, on the 30th of June, 1933, pay over to the Quartermaster of the Department of North Carolina United Spanish War Veterans the interest accruing on said sum at the rate of interest earned per annum, during the period from January 1st, 1933, to June 30th, 1933. Thereafter, the Governor, as such trustee, shall pay over to said Department Quartermaster, semiannually each year (namely, as of 31st of December and 30th of June), interest on such portion of this Fund as shall remain in the State Treasury as unexpended for legal claims against the same. Said interest, when so paid to such Department Quartermaster, shall be expended by him only on the written approval of the Department Commander, United Spanish War Veterans of North Carolina, and solely for welfare work among its needy comrades, their widows and their children, and current use of said organization. (1933, c. 554, s. 1.)

§ **143-190. Bond of Department Quartermaster.** — Said Department Quartermaster, as the financial agent and disbursing officer of the United Spanish

War Veterans of North Carolina, shall furnish a surety bond in the amount of five hundred dollars ($500.00) in a surety company authorized to do business in the State of North Carolina, conditioned upon the faithful performance of his duties as specified herein, and such bond to be approved by the said Department Commander. Said trustee of the above fund shall have authority to invest same, or any part thereof, in securities as are legal for trust funds in this State. (1933, c. 554, ss. 2, 3.)

ARTICLE 17.

State Post-War Reserve Fund.

§ **143-191. Appropriation for Fund.**—There is hereby appropriated from the general fund of the State the sum of twenty million dollars ($20,000,000.00), the said sum, together with the investments and income therefrom, to be hereafter known and designated as the State Post-War Reserve Fund. (1943, c. 6, s. 1.)

Editor's Note. — As to repeal of this article insofar as it conflicts with §§ 142-50 through 142-54, see note under § 142-50.

§ **143-192. Fund to be invested by Governor and Council of State; State Treasurer custodian.**—The Governor and Council of State are hereby fully authorized and directed to invest the said fund exclusively in bonds of the United States of America, of such series as may be readily converted into money and notes or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, and in bonds or notes of the State of North Carolina. The interest and revenues received from such investments, or profits realized in the sale thereof, shall become a part of the said State Post-War Reserve Fund and shall be likewise invested. Bonds of the State of North Carolina purchased for the said Fund shall not be cancelled or retired but shall remain in full force and the income therefrom reinvested as hereinbefore provided. The State Treasurer shall be custodian of all securities and investments made under authority of this article. (1943, c. 6, s. 2.)

§ **143-193. Fund to be held for such use as directed by General Assembly.**—The said State Post-War Reserve Fund shall be held for such use as shall hereafter be directed by an act of the General Assembly of North Carolina, and no other use thereof whatsoever shall be made. (1943, c. 6, s. 3.)

§ **143-194. Report to General Assembly.** — The Governor and Council of State shall make a report in writing to the General Assembly, not later than the tenth day of each regular or special session thereof, stating the nature and amount of all receipts and disbursements from the said Fund and the amount contained in said Fund, and giving an itemized statement of all investments made as herein authorized, which report shall be spread upon the journals of the Senate and House of Representatives. (1943, c. 6, s. 4.)

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§ **143-195. Certain State agencies to file administrative regulations or rules of practice with Secretary of State; rate, service or tariff schedules, etc., excepted.**—On or before the first day of June of one thousand nine hundred and forty-three, each agency of the State of North Carolina created by statute and authorized to exercise regulatory, administrative or semi-judicial functions, shall file with the Secretary of State a complete copy of all general administrative rules and regulations or rules of practice and procedure, formulated or adopted by the agency for the performance of its functions or for the exercise of its authority and shall thereafter, immediately upon the adoption of any new general administrative rule or regulation or rule of practice and procedure, or the formulation or adoption of any amendment to any general administrative rule or regulation or rule of practice and procedure, file a copy of the same with the Secretary of State: Provided that nothing contained in this article shall require any State agency to file in the office of the Secretary of State any rate, service or tariff schedule or order or any administrative rule or regulation referring to any such rate, service or tariff schedule. (1943, c. 754, s. 1.)

Editor's Note. — For comment on this and the three following sections, see 21 N. C. Law Rev. 328.

Cited in State v. Speizman, 230 N. C. 459, 53 S. E. (2d) 533 (1949).

§ **143-196. Rules and regulations effective only after filing; date of filing to be shown.**—The general administrative rules and regulations or rules of practice and procedure, formulated or adopted by any of the State agencies, shall remain in full force and effect until the first day of June, one thousand nine hundred and forty-three, but thereafter shall be effective only from and after the time a copy is filed with the Secretary of State. For purposes of record, it shall be the duty of the Secretary of State to stamp each rule and regulation as the same is filed, showing thereon the date the same is filed in his office. (1943, c. 754, s. 2.)

§ **143-197. Copies of rules and regulations available to public.**—The Secretary of State, upon the call of the commission created by Resolutions Twenty-seven and Thirty-four of the General Assembly of one thousand nine hundred and forty-one, or any member of the said commission shall supply copies of said rules and regulations filed in his office, and the said commission or any member thereof shall have access to any or all of said rules and regulations during any hour that the office of the Secretary of State is open to the public. The said rules and regulations shall be available to any member of the public, but the Secretary of State shall have the authority to charge the usual and customary fee for certified copies thereof. (1943, c. 754, s. 3.)

§ **143-198. Construction of article.**—The provisions of this article shall not be construed as affecting or repealing any provisions in any act prescribing adoption, promulgation or approval of administrative rules or regulations and rules of practice and procedure, but the provisions of this article shall be in addition to the provisions which may be contained in any article with respect to the prescribing, adoption, promulgation or approval of such rules. (1943, c. 754, s. 4.)

§ **143-198.1. State agencies and boards to file copy of certain administrative rules with clerks of superior courts; clerks to file as official records.**—In addition to the requirements hereinbefore made in this article, every agency and administrative board of the State of North Carolina created by statute and authorized to exercise regulatory, administrative, or quasi-judical functions, shall within ninety days of March 17, 1949, file with the clerk of the superior court of each county in North Carolina, a certified indexed copy of all general administrative rules and regulations or rules of practice and procedure, the violation of which would constitute a crime, formulated or adopted by such agency or administrative board for the performance of its functions or for the exercise of its authority, and shall also mail to each member of the General Assembly of 1949 a similar certified indexed copy.

In addition to the original statement filed with each clerk of the superior court, as required herein, each such agency or board shall, within fifteen days of the adoption of any additional or amendatory rule or regulation, file with each clerk of the superior court a certified indexed copy of such new or amendatory rule or regulation.

The clerk of the superior court of each county shall file as part of the records of his office all such rules and regulations. (1949, c. 378.)

Editor's Note. — For a brief comment on this section, see 27 N. C. Law Rev. 408.

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of State.— Roanoke Island Historical Association, Incorporated is hereby permanently placed under the patronage and control of the State. (1945, c. 953, s. 1.)

§ 143-200. Members of board of directors; terms; appointment. — The governing body of said Association shall be a board of directors consisting of the Governor of the State, the Attorney General and the Director of the State Department of Archives and History as ex officio members, and the following twenty-one members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of two years and until their successors are appointed. Appointments thereafter shall be made by the membership of the Association in regular annual meeting or special meeting called for such purpose, and in the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. Vacancies occurring on the board of directors shall be filled by the Governor of the State. (1945, c. 953, s. 2.)

§ 143-201. Bylaws; officers of board.—The said board of directors when organized under the terms of this article shall have authority to adopt bylaws for the organization and said bylaws shall thereafter be subject to change only by three-fifths vote of a quorum of said board of directors; the board of directors shall choose from its membership or from the membership of the Association a chairman, a vice-chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice-chairmen. (1945, c. 953, s. 3.)

§ 143-202. Exempt from taxation; gifts and donations.—The said Association is and shall be an educational and charitable association within the meaning of the laws of the State of North Carolina, and the property and income of such Association, real and personal, shall be exempt from all taxation. The said Association is authorized and empowered to receive gifts and donations and administer the same for the charitable and educational purposes for which the Association is formed and in keeping with the will of the donors, and such gifts and donations to the extent permitted by law shall be exempted from the purpose of income taxes and gift taxes. (1945, c. 953, s. 4.)

§ 143-203. State Auditor to make annual audit.—It shall be the duty of the State Auditor to make an annual audit of the accounts of the Association and make a report thereof to the General Assembly at each of its regular sessions. (1945, c. 953, s. 5.)

§ 143-204. Authorized allotment from contingency and emergency

fund.—The Governor and Council of State, in the event State aid is reasonably necessary for the restoration and production of the pageant known and designated as "The Lost Colony," are authorized and empowered to allot a sum not exceeding ten thousand dollars ($10,000) a year from the contingency and emergency fund to aid in the restoration and production of said pageant, such allotment, however, to be made only upon evidence submitted to the Governor and Council of State by the Association that during the immediately preceding season of production because of inclement weather or other circumstances or factors beyond the control of the Association, the said "Lost Colony" was operated at a deficit. (1945, c. 953, s. 6.)

Article 20.

Recreation Commission.

§ **143-205. Recreation Commission created.**—There is hereby created an agency to be known as the North Carolina Recreation Commission. (1945, c. 757, s. 1.)

§ **143-206. Definitions.**—(1) "Recreation," for the purposes of this article, is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure time nature.

(2) "Commission" means the North Carolina Recreation Commission.

(3) "Committee" means the Advisory Recreation Committee. (1945, c. 757, s. 2.)

§ **143-207. Membership; terms; removal; vacancies; meetings; expenses.**—(1) The Recreation Commission shall consist of seven members, appointed by the Governor, and the Governor, Superintendent of Public Instruction, Commissioner of Public Welfare and Director of the Department of Conservation and Development as members ex officio.

(2) In making appointments to the Commission, the Governor shall choose persons, in so far as possible, who understand the recreational interests of rural areas, municipalities, private membership groups and commercial enterprises. The Commission shall elect, with the approval of the Governor, one member to act as chairman. At least one member of the Commission shall be a woman, and at least one member shall be a negro. A majority of the Commission shall constitute a quorum, but only when at least four of the appointed members are present.

(3) For the initial term of the appointed members of the Commission, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one one for a term of four years, one for a term of five years, and two for a term of six years; and thereafter, the successor of each member shall be appointed for a term of four years and until his successor is appointed and qualified.

(4) Any appointed member of the Commission may be removed by the Governor.

(5) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(6) The Commission shall meet quarterly in January, April, July, and October, on a date to be fixed by the chairman. The Commission may be convoked at such other times as the Governor or chairman may deem necessary.

(7) Members of the Commission shall receive reasonable travel and maintenance expenses while attending meetings, but they shall not be reimbursed for travel and maintenance expenses for longer than four days for any one meeting. (1945, c. 757, s. 3.)

§ **143-208. Duties of Commission.**—It shall be the duty of the Commission:

(1) To study and appraise recreational needs of the State and to assemble and disseminate information relative to recreation.

(2) To co-operate in the promotion and organization of local recreational systems for counties, municipalities, townships, and other political subdivisions of the State, and to aid them in designing and laying out recreational areas and facilities, and to advise them in the planning and financing of recreational programs.

(3) To aid in recruiting, training, and placing recreation workers, and promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To co-operate with State and federal agencies, the Recreation Advisory Committee, private membership groups, and with commercial interests in the promotion of recreational opportunities.

(6) To submit a biennial report of its activities to the Governor. (1945, c. 757, s. 4.)

§ **143-209. Powers of Commission.** — The Commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties.

(2) To accept any grant of funds made by the United States, or any agency thereof, for the purpose of carrying out any of its functions.

(3) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the State Sinking Fund may be invested. All such gifts, bequests, devises and all proceeds from such invested endowments, shall be used for carrying out the purposes for which they are made.

(4) To administer all funds available to the Commission.

(5) To act jointly, when advisable, with any other State agency, institution, department, board or commission in order to carry out the Recreation Commission's objectives and responsibilities. No activity of the Commission, however, shall be allowed to interfere with the work of any other State agency.

(6) To employ, with the approval of the Governor, an executive director, and upon the recommendation of the executive director, such other persons as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the Commission. (1945, c. 757, s. 5.)

§ **143-210. Advisory Committee.**—The governor shall name a Recreation Advisory Committee consisting of thirty members who shall serve for a term of two years. The Governor shall name one member to act as chairman of the Committee. Vacancies occurring on the Committee shall be filled by the Governor for the unexpired term.

Members of the Committee shall represent, in so far as feasible, all groups and phases of beneficial recreation in the State.

The Committee shall meet once each year with the Recreation Commission at a time and place to be fixed by the Governor. Members of the Committee shall serve without compensation.

The Committee shall act in an advisory capacity to the Recreation Commission, discuss recreational needs of the State, exchange ideas, and make to the Commission recommendations for the advancement of recreational opportunities. (1945, c. 757, s. 6.)

ARTICLE 21.

State Stream Sanitation and Conservation.

§ **143-211. Declaration of policy.**—It is hereby declared to be the policy of the State that the water resources of the State shall be prudently utilized in the best interest of the people. To achieve this purpose, the government of the State shall assume responsibility for the quality of said water resources. The maintenance of the quality of the water resources requires the creation of an agency charged with this duty, and authorized to establish methods designed to protect the water requirement for health, recreation, fishing, agriculture, industry, and animal life. This agency shall establish and maintain a program adequate for present needs, and designed to care for the future needs of the State. (1951, c. 606.)

Editor's Note. — Session Laws 1951, c. 606, rewrote this article which was formerly captioned "State Stream Sanitation and Conservation Committee" and comprised §§ 143-211 through 143-215.1, codified from Session Laws 1945, c. 1010 and Session Laws 1947, c. 786.

§ **143-212. Definitions.** — The terms used in this article are defined as follows:

(1) The term "Committee" shall mean the committee in the North Carolina State Board of Health as hereinafter provided, and the term "member" shall mean member of said committee.

(2) The term "waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which the State has jurisdiction.

(3) The term "waste" shall mean and include the following:

(a) "Sewage" which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

(b) "Industrial waste" which shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resource.

(c) "Other waste" which shall mean sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

(d) The terms "waste," "industrial waste," and "other wastes" shall not be construed to include silt, soil and its natural content which may in anywise be discharged into streams.

(4) The term "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, government agencies, or private or public corporations organized or existing under the laws of this State or any other State or country.

(5) Whenever reference is made in this article to the "discharge of waste," it shall be interpreted to include the discharge of wastes into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.

(6) The term "pollution" means a condition of any waters (as determined by standardized tests under conditions and procedures to be prescribed by official regulations to be issued under authority of this article) which is in contravention of the standards established and applied to such waters pursuant to § 143-215.

(7) The term "standard" or "standards" means such measure or measures of the quality of waters as are established by the Committee pursuant to § 143-215.

(8) The term "sewer system" means pipe lines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(9) The term "treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

(10) The term "disposal system" means a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

(11) The term "outlet" means the terminus of a sewer system, or the point of emergence of any sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the State.

(12) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed designated by the Committee for purposes of §§ 143-215, 143-215.1 and 143-215.2 to be defined by the Committee in its official regulations.

(13) The term "effective date" means the date, as established pursuant to § 143-215 and announced by official regulations of the Committee, after which the provisions of §§ 143-215.1 and 143-215.2 shall become applicable and enforceable, with respect to persons within one or more watersheds designated by the Committee. (1951, c. 606.)

§ **143-213. Stream Sanitation Committee; creation.**—(a) Establishment of Committee.—For the purpose of administering this article, there is hereby created within the State Board of Health a permanent committee to be known as the "State Stream Sanitation Committee" which shall be composed of eight members as follows: The chief engineer of the State Board of Health, ex officio, the chief engineer of the Water Resources and Engineering Division of the Department of Conservation and Development, ex officio, and six members appointed by the Governor, one who shall at the time of appointment be actively connected with and have had production experience in the field of agriculture, one who shall at the time of appointment be actively connected with and have had experience in the wildlife activities of the State, two who shall at the time of appointment be actively connected with and have had practical experience in waste disposal problems of municipal government, and two who shall at the time of appointment be actively connected with and have had industrial production experience in the field of industrial waste disposal. Of the members initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for a term of six years. Thereafter, all appointments shall be for terms of six years. Ex officio members shall have all the privileges, rights, powers and duties held by appointed members under the provisions of this article except the right to vote.

(b) All appointments by the Governor, except the initial appointments, shall be made during a session of the General Assembly and shall be subject to the confirmation of the Senate; except that appointments made to fill vacancies occurring by reason of death, resignation or removal from office as provided below shall be valid until the first convening of the General Assembly following such interim appointment. In each instance the appointment shall be of a person of experience in the same field as that of the member who is being replaced. The Governor may at any time, after notice and hearing, remove any member for gross inefficiency, neglect of duty or other sufficient cause.

(c) Initial Appointments.—In order to make available to the State the benefit of the six years of study by the State Stream Sanitation and Conservation Committee created for that purpose by the legislature of 1945, all members appointed by the Governor initially, except the member who shall have had experience with wildlife activities, shall be from the present membership of the State Stream Sanitation and Conservation Committee.

(d) Compensation of Committee Members.—No salary or other compensation, for services thereon, shall be allowed members of the Committee who already receive compensation as officials or employees of State departments. Service on the Committee is to be considered as part of the duties of such officials as representatives of the respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members shall receive ten dollars ($10.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting, or when on official business of the Committee. (1951, c. 606.)

§ **143-214. Organization of Committee; meetings; executive secretary.**—(a) First Meeting; Organization; Rules; Regulations.—The Committee shall, within 30 days after its appointment, meet and organize, and elect from among its members a chairman and such other officers as it may choose for such terms as may be specified by the Committee in its rules and regulations. The chairman may appoint members to such committees as the work of the Committee may require.

(b) Meeting of Committee.—The Committee shall meet regularly, at least once every six months, at places and dates to be determined by the Committee. Special meetings may be called by the chairman on his own initiative, and must be called by him at the request of two or more members of the Committee. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum.

(c) Executive Secretary.—The Committee shall appoint an executive secretary, who shall be a well qualified individual, fully trained and experienced in the field of waste disposal. Such executive secretary shall be the administrative officer of the Committee and shall have the authority to perform in the name of the Committee such functions and duties of the Committee as shall be delegated to him by formal resolution. The executive secretary shall:

(1) Attend all meetings, but without the power of voting,

(2) Keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times,

(3) Direct the work of the personnel employed by the Committee and perform such other duties as the Committee may from time to time direct.

(d) Personnel and Facilities of Committee.—The Committee shall have the authority to employ clerical, technical, and professional personnel with such qualifications as the Committee may prescribe, in accordance with the State personnel regulations and budgetary laws, and shall have the authority to pay such personnel from any appropriations made to the Committee, or from any appropriations made to any other agency of the State for the benefit of the Committee. In the interest of efficient use of personnel and facilities, technical, laboratory, or other services shall be performed, insofar as practicable, by personnel of presently existing State agencies. The Committee shall have authority to compensate such State agencies for services received. The Attorney General shall act as attorney for the Committee.

(e) Fiscal Affairs of Committee.—For the more efficient conduct of the fiscal affairs of the Committee, as well as for the convenience of any State agency, officer or department that may hold or have appropriated to or the custody of funds for the use and benefit of the Committee, all such funds shall be held in a separate or special account on the books and records of such State agency, officer or department with a separate financial designation or code number to be assigned by the Budget Bureau or its agent, and said funds shall be expended solely upon the proper authorization or order of the Committee. (1951, c. 606.)

§ **143-215. Water classification; standards and assignment of classifications.** — (a) Duties of Committee under This Section. — The Committee is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Committee believes ought to be classified separately in order to promote the policy and purposes of this article, omitting only such waters as, in the opinion of the Committee, are insufficiently important to justify classification or control under this article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Committee deems proper in order to promote the policy and purposes of this article most effectively.

(b) Criteria for Classification.—In developing and adopting classifications, and the standards applicable to each, the Committee shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to an existing or a contemplated best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards.—In establishing the standards applicable to each classification, the Committee shall consider, and the standards when finally adopted and published shall state: The extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications.—In assigning to each identified water the appropriate classifications (with it accompanying standards), the Committee shall consider, and the decision of the Committee when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses which have been made, are being made, or may in the future be made, of such water for transportation, domestic consumption, industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) The extent to which such water is already receiving sewage, industrial waste, or other waste as a result of present or past usage of the water, and the relative economic values involved in improving or attempting to improve the condition of such water.

(e) Proposed Adoption and Assignment of Classification.—Prior to the adoption by the Committee of the series of classifications and standards applicable thereto as specified in subparagraph (a) (1) of this section, prior to the assignment by the Committee of any such classifications to any waters as specified in subparagraph (a) (3) of this section, and prior to any modification of any of such actions previously taken by the Committee, the Committee shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Committee proposes to take. The

notice shall either include details of such proposed action, or where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the Committee in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Committee pursuant to the provisions of § 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Committee on or before the first date set for the hearing. The Committee is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Committee shall permit anyone who so desires to file a written argument or other statement with the Committee in relation to any proposed action of the Committee at any time within 30 days following the conclusion of any public hearing or within any such additional time as the Committee may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classifications.—Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Committee pursuant to this section, the Committee shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Committee shall likewise publish as part of its official regulations, the effective date for the application of the provisions of §§ 143-215.1 and 143-215.2 to persons within such watershed or watersheds. Such effective date shall not be less than 60 days from the date of such publication.

(g) Committee's Power to Modify or Revoke.—The Committee is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedual requirements of this article. (1951, c. 606.)

§ **143-215.1. Control of new sources of pollution.**—(a) Required Permits.—After the effective date applicable to any watershed, no person shall:

(1) Make any new outlet into the waters of such watershed;

(2) Construct or operate any new disposal system within such watershed;

(3) Alter or change the construction or the method of operation of any existing disposal system within such watershed;

(4) Increase the quantity (determined by such method of measurement as the Committee shall prescribe by its official regulations) of sewage, industrial waste, or other waste discharged through any existing outlet or processed in any existing disposal system to an extent which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water, or to an extent beyond such minimum limits as the Committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;

(5) Change the nature of the sewage, industrial waste or other waste discharged through any existing outlet or processed in any existing disposal system in any way which would adversely affect the condition of the receiving water within such watershed in relation to any of the standards applicable to such water: Unless such person shall have applied to the Committee for and shall have received from the Committee a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit, and in this connection no such permit shall be granted for disposal of wastes into water used for a public water supply where

the State Board of Health determines and advises the Committee that such waste disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon until complete plans and specifications have been submitted to and approved by the State Board of Health in accordance with the provisions of § 130-110. In any case where the Committee denies a permit, it shall state in writing the reasons for such denial and shall also state the Committee's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. If any person has obtained the approval of the State Board of Health for the construction, alteration, or change of any disposal system prior to the effective date applicable to any watershed in which such disposal system is located, such person shall not be required to obtain a permit from the Committee with respect to such construction, alteration or changes, and further provided that any person who has let a contract for the construction of a plant or who has acquired a plant site and the construction of which plant is begun within twelve (12) months from April 6, 1951, shall have the status of a person already established in the discharge of waste, and may proceed with the proposed methods of discharge without the necessity of applying for a permit from this Committee.

(b) Committee's Powers as to Permits.—The Committee shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing so far as reasonably possible, any pollution or any increase in the pollution of the waters of the State from any additional or enlarged sources. The Committee shall have the power:

(1) To grant a permit with such conditions attached as the Committee believes necessary to achieve the purposes of this section;

(2) To grant any temporary permit for such period of time as the Committee shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no conditions shall be attached to the permit, except when the Committee finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Procedure as to Applications and Permits.—All applications for permits and all permits issued by the Committee, or decisions denying any application for a permit, shall be in writing. The Committee shall act on all applications for permits as rapidly as possible and consideration of and action on such applications shall be given preference to all other business of the Committee. The Committee shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Committee to take action on an application for a permit within 90 days shall be treated as approval of such application. The Committee shall adopt such forms and rules as it deems necessary, to be published as part of its rules of procedure, with respect to the application for the grant or denial of permits pursuant to this section.

(d) Hearings and Appeals.—Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Committee upon making written demand therefor within 30 days following the giving of notice by the Committee as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Committee on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings in the case shall be as specified in § 143-215.4 and in any applicable rules of procedure of the Committee. (1951, c. 606.)

§ 143-215.2. Abatement of existing pollution.—(a) Required Compliance with Special Orders.—After the effective date applicable to any watershed, no person shall discharge any sewage, industrial waste, or other waste into the waters of such watershed in violation of, or except upon compliance with the terms of, any special order issued by the Committee to such person in accordance with the procedure specified by this article.

(b) Committee's Powers as to Special Orders.—The Committee is hereby empowered, after the effective date applicable to any watershed, to issue (and from time to time to modify or revoke) a special order to any person whom it finds responsible for causing or contributing to any pollution of water within such watershed. Such an order may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Committee deems necessary and feasible in order to alleviate or eliminate such pollution. No such special order shall be issued against a person, or, if issued, the time for compliance therewith by such person shall be extended to the extent necessary, where the Committee concludes, after investigation, or where it is demonstrated after a hearing, that it is impossible or, for the time being, not feasible for such person to correct or eliminate the activities causing or contributing to any pollution. Such a situation shall be deemed to exist where no adequate or practical method of disposal or treatment is known for the particular waste for which such person is responsible, or where the cost of any such known method of disposal or treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal or treatment until further opportunity is given for the discovery of more effective methods. The burden of proof as to any of such conditions or any other conditions alleged to exist as a reason for the non-issuance of a special order or for extension of the time of compliance therewith shall be upon the person alleging such conditions.

(c) Procedure as to Special Orders.—No special order shall be issued by the Committee (unless issued upon the consent of a person affected thereby) except after a hearing in accordance with the procedural requirements specified in § 143-215.4 and in any applicable rules of procedure of the Committee. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(d) Appeals.—Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of § 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Committee shall be final and binding.

(e) Encouragement of Voluntary Action.—The powers conferred by this section are granted for the purpose of enabling the Committee to carry out a Statewide program of pollution abatement to the end that ultimately the purposes of this article will be achieved. It is the intent of this section, however, that the Committee shall seek to obtain the co-operative effort of all persons contributing to each situation involving pollution in remedying such situation, and that the powers granted by this section shall be exercised only when the objective of this section cannot be otherwise achieved within a reasonable time.

(f) Equality of Enforcement Action.—It is the intent of this article that a comprehensive all-inclusive effort be made to accomplish the purposes of this article and to that end it is specifically provided that whenever more than one person is found to be responsible for a condition involving pollution of any segment of any particular water as identified and classified under § 143-215 that the Committee shall endeavor to obtain the co-operative effort of all such persons and that if this cannot be accomplished and the Committee deems it necessary to take enforcement action to correct such pollution, by invoking the power granted by this article, such action shall be taken against all persons who share responsibility for such condition, to the extent that such persons have not voluntarily undertaken satisfactory remedial measures or have not agreed, by consenting to the issuance of special orders pursuant to this section to undertake such measures: Provided, however, that where because of operation of law or otherwise, enforcement against any municipality or other political subdivisions of the State cannot be had, no special order shall be issued against any other person within the segment of water where abatement of pollution is sought.

(g) Voluntary Projects; Applications for Certificate of Appproval; Installation of Treatment Works and Approval Thereof.—After April 6, 1951, any person who is discharging or who proposes to discharge, sewage, industrial waste, or other waste into any waters of the State may submit to the Committee proposed plans for the installation of treatment works with respect to such sewage, industrial waste or other waste, and apply to the Committee for approval thereof. Such applications shall be in such form as the Committee may prescribe in its rules of procedure, shall describe in precise detail the nature and volume of the sewage, industrial waste or other waste which the applicant discharges or proposes to discharge, and shall contain or be supplemented by any information whatsoever which the Committee may request. The applicant may submit the opinion of any independent expert as to the probable effectiveness and results of such treatment works and the Committee may request that the opinion of experts or additional experts be obtained in any case where it considers the same necessary, the expense in connection therewith to be borne by the applicant. Such an application may be filed by any person irrespective of whether any proceedings involving such person have been taken or are pending under any other provision of this article.

(h) Voluntary Projects, Conditions for Issuance of Certificate.—The Committee shall make a thorough investigation of any application filed pursuant to this section before acting thereon, and may require the applicant to submit any statements in support of such application under oath. The Committee shall not issue a certificate of approval to any applicant, unless it finds that the proposed treatment works, if installed and operated in accordance with the plans submitted to the Committee:

(1) Will provide an effective method of preventing or abating actual or potential pollution of waters into which the applicant is discharging or proposes to discharge any sewage, industrial waste, or other waste; and

(2) Will require such expenditure by the applicant, in relation to the waste treatment problem to be remedied and the size and nature of the applicant's activities resulting in such problem, that it is fair to give the applicant reasonable protection against being required by law, at some later date, to make further capital expenditures in connection with the same waste treatment problem.

(i) Voluntary Projects, Effect of Certificate of Approval.—If the Committee approves the proposed treatment works, with any modifications it may recommend, it shall have the power to issue to the applicant a certificate of approval which shall have the following effect and be subject to the following limitations:

(1) Such certificate shall give the person to whom it is issued binding assurance that, for the period specified in the certificate and so long as such person complies with all the terms of the certificate, he will not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for the purpose of alleviating or eliminating any pollution or alleged pollution resulting from the sewage, industrial waste or other waste which such person is discharging into any water.

(2) Such certificate shall be effective from the date of its issuance for such period of time as the Committee deems fair and reasonable in the light of all the circumstances.

(3) Such certificate shall provide that it shall become void unless the applicant completes the proposed treatment works within a time limit specified in such certificate, and unless the proposed treatment works is constructed and at all times operated in accordance with the plans and specifications approved by the Committee pursuant to this section.

(4) Such certificate shall be effective only with respect to the nature and volume of sewage, industrial waste or other waste described in the application or in the certificate itself after treatment by the proposed treatment works.

(5) Such certificate shall inure to the benefit of any successors or assigns of the applicant subject to the same conditions as are applicable to the applicant.

(6) Such certificate may impose any other limitations on its effectiveness as the Committee may deem necessary or appropriate.

(j) Voluntary Projects, Procedure.—The Committee by rules of procedure, not inconsistent with this article, may specify any further rules applicable to the granting of certificates of approval pursuant to this section. Any action by the Committee on an application for a certificate of approval is a matter of discretion and consequently there shall be no right to a hearing nor to an appeal with respect to any refusal of the Committee to grant any certificate of approval, or to the terms thereof. The Committee shall have power to entertain and act on applications for modification of any certificate of approval. The Committee shall have no power to revoke or modify a certificate of approval which has been issued, except by agreement, or except where the terms of such certificate have been violated or have not been fulfilled.

(k) Nonvoluntary Projects, Effect of Compliance.—Any person who installs a treatment works for the purpose of alleviating or eliminating pollution in compliance with the terms of, or as a result of conditions specified in, a permit issued pursuant to § 143-215.1 or a special order issued pursuant to § 143-215.2 or a final decision of the Committee or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this and any other State law relating to the control of water pollution, for a period to be fixed by the Committee or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order or decision or the conditions of such permit become finally effective, if:

(1) The treatment works results in the elimination or alleviation of pollution to the extent required by such permit, special order or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order or decision within the time limit, if any, specified thereby, or as the same may be extended, and thereafter remains in compliance. (1951, c. 606.)

§ **143-215.3. General powers of Committee.**—(a) Auxiliary Powers.—In addition to the specific powers prescribed elsewhere in this article, and for the purpose of carrying out its duties, the Committee shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this article and rules of procedure establishing and amplifying the procedures to be followed in the administration of the article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by § 143-215.4;

(2) To conduct such investigations as it may deem necessary to carry out its duties as prescribed by this article, and for this purpose to enter upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste and to require written statements or reports under oath with respect to pertinent ques-

tions relating to the operation of any sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision;

(3) To conduct public hearings in accordance with the procedures prescribed by this article;

(4) To delegate such of the powers of the Committee as the Committee deems necessary to one or more of its members or to any qualified employee of the Committee; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Committee; and further provided that the Committee shall not delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution;

(5) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Committee may deem necessary for enforcement of any of the provisions of this article or of any official actions of the Committee, including proceedings to enforce subpoenas or for the punishment of contempt of the Committee;

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(b) Research Functions.—The Committee shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for waste disposal problems. To this end, the Committee may co-operate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina education institution, with the consent of such institution. In addition, the Committee shall have the power to co-operate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this article. All State departments shall advise with and cooperate with the Committee on matters of mutual interest.

(c) Relation with the Federal Government.—The Committee as official agency for the State shall co-operate with and is delegated to act in conjunction with the State Board of Health in local administration of all matters covered by Public Law 845, passed by the Congress of the United States in 1948 and future legislation by Congress relating to water quality.

(d) Relations with Other States.—The Committee may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding. (1951, c. 606.)

§ 143-215.4. General provisions as to procedure; seal.—(a) Persons Entitled to Notice, Mailing List.—In any proceeding pursuant to §§ 143-215.1, 143-215.2, 143-215.3, the Committee shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to § 143-215, the Committee shall give notice as provided by that section, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Committee to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Committee, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Committee's Regulations and Rules.—All official acts of the Committee which have or are intended to have general application effect shall be incorporated either in the Committee's official regulations (applying and interpreting this article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Committee be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Secretary of State. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Committee in sufficient numbers to satisfy all reasonable requests therefor. The Committee shall codify its regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices.—All notices which are required to be given by the Committee or by any party to a proceeding shall be given by registered mail to all persons entitled thereto, including the Committee. The date of receipt for such registered mail shall be the date when such notice is deemed to have been given. Notice by the Committee may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Committee by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings.—The following provisions, together with any additional provisions not inconsistent herewith which the Committee may prescribe, shall be applicable in connection with hearings pursuant to this article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to §§ 143-215.1 and 143-215.2 or 143-215.3 whether called at the instance of the Committee or of any person, shall be held upon not less than 30 days' written notice given by the Committee to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings by the Committee shall be open to the public.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Committee. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Committee.

(4) The Committee shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas issued, by the Committee, in connection with any hearing shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be as prescribed in connection with subpoenas, issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Committee, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Committee, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the Committee shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the Committee shall afford the parties thereto an opportunity to submit within such time as prescribed by the Committee proposed findings of fact and conclusions of law and any brief in connection therewith. The

record in the proceeding shall show the Committee's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the Committee shall set forth separately the Committee's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Committee is based.

(10) The Committee shall have the authority to adopt a seal which shall be the seal of said Committee and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Committee or its minutes may be certified by the secretary of the Committee under his hand and the seal of the Committee and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of same if such records are competent, relevant and material in any such action or proceeding. The Committee shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Committee or by any other person or interested party where material, relevant and competent. (1951, c. 606.)

§ **143-215.5. Judicial review.**—Any person against whom any final order or decision has been made except where no appeal is allowed as provided by § 143-215.2 (j) shall have a right of appeal to the superior court of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Committee shall send a certified transcript of the order or decision and the notice of appeal to the superior court. The trial shall be de novo, with the procedure as in other civil matters, and appellant shall have the right to have a jury trial.

Any person discharging wastes into the waters which are the subject matter of the proceedings, whether such discharge is immediate or remote, shall have the right to intervene in said pending proceeding and shall have the same right as any other party to introduce evidence as to the reasonableness of the order as defined. Failure of such person to intervene in the proceeding shall not operate to deny him his right to a full hearing on any order that might subsequently be issued to him as provided in this section.

Both the person and the Committee may introduce evidence bearing upon the reasonableness of the order, and the court and jury shall give due consideration to the practicability, the physical and economic feasibility of disposing of the waste involved, and the economic effect on the community, and shall enter such judgment and orders enforcing such judgment as the public interest and equities of the case may require, and as shall be consistent with the provisions of this article. Such judgment and orders shall fix a period of time, during which the compliance therewith shall constitute a satisfactory method of discharging such wastes. The appellant shall not, during said period of time, and while in compliance with said orders, be required, by the Committee or by any court, to change further his method or process of discharging his wastes. In fixing said period of time, due consideration shall be given to the expense involved. Appeals from the judgment and orders of the superior court will lie to the Supreme Court. No bond shall be required of the Committee in appeal to the courts. (1951, c. 606.)

§ **143-215.6. Violations and penalties.**—(a) Acts Which Constitute Violations.—After the effective date applicable to any watershed it shall be a violation of this article for any person within such watershed:

(1) To perform any of the acts specified in § 143-215.1 (a) without first obtaining a permit as required by § 143-215.1, or to perform any such acts in disregard of the terms of any such permit.

(2) To fail to comply with the terms of any special order issued by the Committee to such person, which has become final, pursuant to § 143-215.2.

No person, however, shall be charged with nor convicted of any violation under the provisions hereof by reason of any act or neglect on the part of such person resulting from any act of God, war, strike, riot or other event over which such person has no control.

(b) Penalties for Violations.—Any person who shall be adjudged to have violated this artice shall be guilty of a misdemeanor and shall be liable to a penalty of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each violation. In addition, if any person is adjudged to have committed such violation wilfully, the court may determine that each week during which such violation continued constitutes a separate violation subject to the foregoing penalty: Provided, however, that where a vote of the people is required to effectuate the intent and purpose of this article by a municipality or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying the same into effect, then, and only then, this section shall not apply to the elected officials or to any duly authorized appointed officials or employees, of said municipality or political subdivision. (1951, c. 606.)

§ 143-215.7. Effect on laws applicable to public water supplies, privies and septic tanks.—This article shall not be construed as amending, repealing, or in any manner abridging or interfering with § 130-108 through § 130-120, inclusive, of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the State Board of Health; nor shall the provisions of this article be construed as being applicable to or in anywise affecting the authority of the North Carolina State Board of Health, as contained in article 12, chapter 130, dealing with privies and septic tanks or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers and ordinances and authority to pass ordinances in regard to sewage disposal of municipal corporations. (1951, c. 606.)

ARTICLE 22.

State Ports Authority.

§ 143-216. Creation of Authority; membership.—The North Carolina State Ports Authority is hereby created, consisting of and governed by a board of nine members, said North Carolina State Ports Authority being hereinafter for convenience styled the Authority. The Director of the Department of Conservation and Development shall be ex officio a member of the said board. The Governor shall appoint the other members of said board and the membership thereof shall be selected from the State at large, so as to fairly represent each section of the State and all of the business, agricultural and industrial interests of the State. The terms of office of the members of the board appointed on account of residence in Brunswick, Carteret and New Hanover counties shall terminate on April 11, 1949, and the Governor shall appoint their successors for the unexpired terms held by them. The terms of office of the other members of the board shall continue until the expiration of their terms for which they were appointed. The one additional member of the board shall be appointed by the Governor for a term of six years from and after the first day of May, 1949. Upon the termination of the term of office of each member their successors shall be appointed for a term of six years and until their successors shall have been appointed and qualified. In the event of a vacancy, however caused, the successor shall be appointed by the Governor for the unexpired term. The board shall elect one of their number as chairman, one as vice-chairman and shall also elect a secretary and a treasurer who may not necessarily be a member of the Authority. The board shall meet upon the call of its chairman and a majority of its members shall constitute a quorum for the transaction of its business. The members of the Authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. (1945, c. 1097, s. 1; 1949, c. 892, s. 1.)

Editor's Note. — The 1949 amendment, effective April 11, 1949, rewrote this section.

For act transferring to the State Ports Authority all property and functions of the Morehead City Port Commission and providing for cancellation of outstanding bonds of said Commission, see Session Laws 1951, c. 776.

§ **143-217. Purposes of Authority.**—Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft, terminal railroads and facilities and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

A. To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places as they may deem feasible for the more expeditious and efficient handling of water-borne commerce from and to any part of the State of North Carolina and other states and foreign counties.

B. To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

C. To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

D. To co-operate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

E. To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

F. To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

G. And in general to do and perform any act or function which may tend to or be useful toward the development and improvement of the said harbors and seaports of the State of North Carolina, and to increase the movement of water-borne commerce, foreign and domestic, through said harbors and seaports.

The enumeration of the above purposes shall not limit or circumscribe the board objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2.)

§ **143-218. Powers of Authority.**—In order to enable it to carry out the purposes of this article, the said Authority shall:

A. Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

A1. Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

B. Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this article, all or any of them;

C. Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads;

D. Appoint an executive director for the said Ports Authority to serve at the pleasure of the board and, with the approval of the Governor, to fix his compensation; appoint and employ and dismiss at pleasure, such employees as may be selected by the Authority board, and to fix and pay the compensation thereof. The governing board of said Ports Authority shall annually appoint an executive committee of three members of the board, which executive committee shall be vested with authority to do all acts which might be performed by the whole board, provided the board has not theretofore acted upon such matters. The members of the said executive committee shall serve until their successors are duly appointed;

E. Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this article;

F. Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this article;

G. Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this article;

H. Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof for any and all of the purposes authorized in this article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, and to give such evidences of indebtedness as shall be required by any such federal agency, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

I. Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

J. Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;

K. Be authorized and empowered to do any and all other acts and things in this article authorized or required to be done, whether or not included in the general powers in this section mentioned; and

L. Be authorized and empowered to do any and all things necessary to accomplish the purposes of this article: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2.)

Editor's Note. — The 1949 amendment added the second paragraph to subsection A and rewrote subsection D.

§ **143-219. Issuance of bonds.**—As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, terminal railroad or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue negotiable revenue bonds of the Authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(a) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(b) Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(c) Such bonds and the income thereof shall be exempt from all taxation within the State. (1945, c. 1097, s. 4.)

Editor's Note.—As to State Ports Bond Act of 1949, see Session Laws 1949, c. 820.

§ **143-220. Power of eminent domain.**—For the acquiring of rights of way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this state, or by the North Carolina State Highway Department, or by railroad corporations, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5.)

§ **143-221. Exchange of property; removal of buildings, etc.**—The Authority may exchange any property or properties acquired under the authority of this chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this article. (1945, c. 1097, s. 6.)

§ **143-222. Dealing with federal agencies.** — The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this article, as stated in § 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the Authority board may deem advisible. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7.)

§ **143-223. Terminal railroads.**—The Authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the track of such railroad or other conveyances. And the Authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said Department exercise the authority herein given, then in such event it shall be the duty of the said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The Authority shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1945, c. 1097, s. 8.)

§ **143-224. Jurisdiction of the Authority.**—The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports. (1945, c. 1097, s. 9.)

§ **143-225. Treasurer of the Authority.**—The Authority shall select one of its members to serve as its treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon shall be paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10.)

§ **143-226. Deposit and disbursement of funds.**—All authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. Any and all revenues and earnings received by the Authority from its operations shall be handled as directed in section 13, chapter 820 of the Session Laws of 1949. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1.)

Editor's Note. — The 1951 amendment rewrote this section.

§ **143-227. Annual audit; copies to be furnished.** — At least once in each year the State Auditor shall cause to be made a detailed audit of all monies received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor, the Budget Bureau and the Attorney General. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2.)

Editor's Note. — The 1951 amendment rewrote this section.

§ **143-228. Liberal construction of article.**—It is intended that the provisions of this article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13.)

ARTICLE 23.

Armory Commission.

§ **143-229. Definitions.**—The terms used in this article mean:

(a) Commission: The Armory Commission created by this article.

(b) Unit: Any National Guard unit active or inactive or State guard unit or other organized military unit of which the Governor is commander-in-chief.

(c) Funds: Any funds appropriated by any municipality, county or the United States of America and made available for the purpose of acquiring armory sites or constructing or repairing any armory, warehouse, or other facility for the use of any unit or for any other purpose in connection with the housing, training, instruction or promotion of interest of any unit. It shall also include funds which may be donated for the benefit, directly or indirectly, of any unit.

(d) Armory: Any building and/or land suitable for armory purposes with area adjacent thereto, and any building and/or land suitable for warehousing, motor parking, instruction, training, or any other use necessary for any unit.

(e) Armory Site: Any land suitable for the construction of an armory as defined in (d) above, with the adjacent area thereto necessary for motor parking, instruction and training of any unit.

(f) Facilities: Furniture, equipment, warehouses, motor sheds, target ranges and any other adjunct necessary to administration, instruction and training of any unit.

(g) Municipality: Any incorporated city or town and any unincorporated city or town. (1947, c. 1010, s. 1.)

§ 143-230. Composition of Commission.—The Governor of the State of North Carolina, the Attorney General of North Carolina, the Adjutant General of North Carolina, together with two federally recognized officers on the active list of the North Carolina National Guard to be appointed by the Governor and to serve at the pleasure of the Governor, shall constitute the North Carolina Armory Commission. The Governor shall be its chairman and the Adjutant General shall be its secretary. (1947, c. 1010, s. 2.)

§ 143-231. Location of principal office; service without pay; travel expenses; meetings and quorum.—The Commission above named shall have its principal office in Raleigh. The members shall serve without compensation and shall be allowed their reasonable expense incurred in attending meetings of the Commission or while traveling under orders for the performance of duty in connection with the business of the Commission. Such expense shall be payable out of any funds available to the Commission or, if the Governor so directs, out of the appropriation for the Adjutant General's Department. The Commission shall hold regular or special meetings at Raleigh or other designated places at the direction and on call of the Governor, after reasonable notice. A majority of the members shall constitute a quorum for the consideration of business. (1947, c. 1010, s. 3.)

§ 143-232. Authority to foster development of armories and facilities.—The Commission is authorized and empowered to foster the development in North Carolina of adequate armories and other necessary facilities for the proper housing, instruction, training and administration of all units and facilities necessary for the proper protection, care, maintenance, repair, issue and upkeep of public and military property issued to or for the use of any unit. (1947, c. 1010, s. 4.)

§ 143-233. Powers of Commission specified. — The Commission is further authorized and empowered:

(a) To act as an agency of the State of North Carolina for the purpose of setting up and administering any State-wide plan for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities which are now or may be necessary in order to comply with any federal law and in order to receive, administer and disburse any funds which may be provided by act of Congress for such purpose;

(b) As such agency of the State of North Carolina, to promulgate State-wide plans for the acquisition of armories and armory sites, for the construction and maintenance of armories and such other facilities as may be found desirable or necessary to meet the requirements and receive the benefits of any federal legislation with respect thereto;

(c) To receive and administer any funds which may be appropriated by any act of Congress or otherwise for the acquisition of armories and armory sites, for the construction and maintenance of armories and for providing facilities, which may at any time become available for such purposes;

(d) To receive and administer any other funds which may be available in furtherance of any activity in which the Commission is authorized and empowered to engage under the provisions of this article;

(e) To adopt such rules and regulations as may be necessary to carry out the intent and purpose of this article. (1947, c. 1010, s. 5.)

§ **143-234. Power to acquire land, make contracts, etc.**—In furtherance of the duties, powers and authority given herein, the Commission is authorized and empowered to accept and hold title to real property in the name of the State of North Carolina, and to engage in contracts and do any and all things necessary to carry out any State-wide program for the acquisition of armories and armory sites, for the construction and maintenance of armories and to provide facilities which may be considered by it as necessary for any unit and which may be authorized by act of Congress or otherwise. (1947, c. 1010, s. 6.)

§ **143-235. Counties and municipalities may lease, convey or acquire property for use as armory.**—Every municipality and county of the State of North Carolina is hereby authorized and empowered to lease or convey by deed to the State of North Carolina: (1) any existing armory and the land adjacent thereto; (2) any real property suitable for the construction of an armory, warehouse or other facility; and (3) any real property suitable for use in the administration, instruction and training of any unit. Every municipality and county is further authorized and empowered to acquire any real property which may be suitable for use as an armory or for the construction of an armory thereon, or for any other purpose of a unit. Contracting of an indebtedness and expenditure of public funds by any municipality or county to comply with the provisions of this article are hereby declared to be a necessary expense and for a public purpose. (1947, c. 1010, s. 7; 1949, c. 1066, s. 1.)

Editor's Note. — The 1949 amendment struck out the words "hereafter acquired" formerly appearing after the word "any" at the beginning of subdivision (1).

§ **143-235.1. Prior conveyances validated.**—All conveyances of real property made before April 20, 1949, by any municipality or county of the State of North Carolina to the State of North Carolina for armory purposes are hereby validated and ratified in every respect. (1949, c. 1066, s. 2.)

§ **143-236. County and municipal appropriations for benefit of military units.**—Every municipality and county is hereby authorized and empowered to appropriate for the benefit of any unit or units such amounts of public funds from year to year as the governing body of such municipality or county may deem wise, patriotic and expedient; and is further authorized, either alone or in connection with others, to provide heat, light, water, telephone service and/or other costs of operation and maintenance of any armory. (1947, c. 1010, s. 8.)

ARTICLE 24.

Wildlife Resources Commission.

§ **143-237. Title.**—This article shall be known and may be cited as the North Carolina Wildlife Resources Law. (1947, c. 263, s. 1.)

§ **143-238. Definitions.**—As used in this article unless the context clearly requires otherwise:

(1) The word "Commission" shall mean the North Carolina Wildlife Resources Commission.

(2) The word "Director" shall mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The terms "wildlife resources" and "wildlife" shall mean and include game birds and other game animals, game and fresh-water fishes, fur bearing animals, song and insect-eating birds, non-game mammals and birds, and all other naturally wild aquatic and terrestrial animals, except those species of fish and other wild aquatic animals which shall come under the classification of commercial fisheries. (1947, c. 263, s. 2.)

§ **143-239. Statement of purpose.**—The purpose of this article is to create a separate State agency to be known as the North Carolina Wildlife Resources Commission, the function, purpose, and duty of which shall be to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and fresh-water fishes, and other wildlife exclusive of commercial fisheries, enacted by the General Assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3.)

§ **143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.**—There is hereby created a Commission to be known as the North Carolina Wildlife Resources Commission. The Commission shall consist of nine citizens of North Carolina, who shall be competent and qualified as herein provided, and who shall be appointed by the Governor. One and only one of the Commission members shall be appointed from each of the following geographical districts:

First district to be composed of the following counties:

Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties:

Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties:

Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties:

Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, New Hanover, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties:

Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties:

Anson, Cabarrus, Davidson, Mecklenburg, Moore, Montgomery, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties:

Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties:

Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties:

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems. (1947, c. 263, s. 4.)

§ **143-241. Appointment of Commission members.**—After passage of this article and on or before the first day of July, 1947, the Governor shall appoint the members of the Commission as follows:

Three members whose terms shall expire on the fourth Tuesday of January, 1949; three members whose terms shall expire on the fourth Tuesday of January, 1951; three members whose terms shall expire on the fourth Tuesday of January, 1953; as the said terms expire, and thereafter, all regular appointments to the Commission shall be for terms of 6 years each, provided that any member of the Commission appointed pursuant to this section may be removed by the Governor for cause. (1947, c. 263, s. 5.)

§ **143-242. Vacancies by death, resignation, removal, or otherwise.**—Vacancies in the Commission resulting from death, resignation, removal, or from any other cause, shall be filled by appointment by the Governor of a competent person for the unexpired term. (1947, c. 263, s. 6.)

§ **143-243. Organization of the Commission; election of officers.**—The Commission shall hold at least two meetings annually in the city of Raleigh, one in January and one in July, and five members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any three members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this article, and shall have an official seal, which shall be judicially noticed. At the first meeting of the Commission, which shall be held in the city of Raleigh on or before the first day of July, 1947, it shall elect one of its members as chairman and one of its members as vice-chairman; thereafter, at the meeting held in January, 1948, and annually thereafter, the Commission shall elect one of its members as chairman and one of its members as vice-chairman; such officers to hold office for a period of one year. (1947, c. 263, s. 7.)

§ **143-244. Location of offices.**—The Board of Public Buildings and Grounds shall provide the Commission with offices in the city of Raleigh, North Carolina. (1947, c. 263, s. 8.)

§ **143-245. Compensation of commissioners.**—The members of the Commission shall receive not more than ten dollars ($10.00) per diem and actual travel expenses while in attendance of meetings of the Commission or engaged in the business of the Commission; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, chapter 143 of the General Statutes of North Carolina. (1947, c. 263, s. 9.)

§ **143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond.** — The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor with the approval of the Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Before entering upon the duties of his office, the Executive Director shall take the oath of office as prescribed for public officials and shall execute and deposit with the State Treasurer a bond in the sum of ten thousand dollars ($10,000.00), to be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of his duties of office. The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commissioner of Game and Inland Fisheries relating to wildlife resources. (1947, c. 263, s. 10.)

§ **143-247. Transfer of powers, duties, jurisdiction, and responsibilities.** — All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the Department of Conservation and Development, the Board of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, the Commissioner of Game and Inland Fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, exclusive of commercial fish and fisheries, are hereby transferred to and vested by law in the North Carolina Wildlife Resources Commission hereby created, subject to the provisions of this article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the Commission immediately upon its organization under the provisions of this article. Provided however, that no provision of this article shall be construed as transferring to or conferring upon the North Carolina Wildlife Resources Commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11.)

§ **143-248. Transfer of lands, buildings, records, equipment, and other properties.**—There is hereby transferred to the North Carolina Wildlife Resources Commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and heretofore have been used or intended for use by the Department of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, and the Commission of Game and Inland Fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur-bearing animals, game fish, inland fisheries, and all other wildlife resources, exclusive of commercial fish or fisheries, which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift, grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said Wildlife Resources Commission shall be held and used by it subject to the provisions of this article and other provisions of law in furtherance of the intents, purposes, and provisions of this article and other provisions of law in such manner and for such purposes as may be determined by the Commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the Governor of the State is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising: Provided, further, nothing herein contained shall be construed to transfer any of the State parks or State forests to the North Carolina Wildlife Resources Commission: Provided, further, title to the property transferred by virtue of the provisions of this article shall be held by the State of North Carolina for the use and benefit of the North Carolina Wildlife Resources Commission and the use, control and sale of any of such property shall be governed by the general law of the State affecting such matters. (1947, c. 263, s. 12.)

§ **143-249. Transfer of personnel.**—Upon the effective date of this article the Division of Game and Inland Fisheries of the North Carolina Department of Conservation and Development shall cease to exist and all employees of said division shall continue as employees of the Commission at their option or until further action by the Commission. (1947, c. 263, s. 13.)

§ **143-250. Wildlife Resources Fund.**—All monies in the game and fish fund or any similar State fund when this article becomes effective shall be credited forthwith to a special fund in the office of the state treasurer, and the state treasurer shall deposit all such monies in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources, exclusive of commercial fish and fisheries, shall also be transferred to the Wildlife Resources Fund.

On and after July 1, 1947, all monies derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this article. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, chapter 143, article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, chapter 143, article 2 of the General Statutes of North Carolina as amended.

All monies credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14.)

§ **143-251. Co-operative agreements.** — In furtherance of the purposes of this article the Commission is hereby authorized and empowered to enter into co-operative agreements pertaining to the management and development of the wildlife resources with federal, state, and other agencies, or governmental subdivisions. (1947, c. 263, s. 15.)

§ **143-252. Article not applicable to commercial fish or fisheries.**—None of the provisions of this article shall be construed to apply to commercial fish or fisheries, or to repeal or modify any existing laws or regulations governing commercial fish or fisheries. (1947, c. 263, s. 16.)

§ **143-253. Jurisdictional questions.**—In the event of any question arising between the Department of Conservation and Development and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17.)

§ 143-254. Conflicting laws; regulations of Department continued.—All laws and clauses of laws in conflict with the provisions of this article are hereby modified and amended so as to conform with the provisions of this article; and all laws and clauses of laws pertaining to the wildlife resources, as herein defined, not in conflict with the provisions thereof are to remain and continue in full force and effect.

Provided further, that all rules and regulations now in force with respect to wildlife resources as herein defined, promulgated by the Department of Conservation and Development under chapter 113 of the General Statutes of North Carolina, shall continue in full force and effect until altered, modified, amended, or rescinded by the Commission created under this article, or repealed or modified by law. (1947, c. 263, s. 18.)

§ 143-254.1. Assent to act of Congress providing aid in fish restoration and management projects.—Assent is hereby given to the provisions of the act of Congress entitled "An Act to Provide that the United States shall aid the States in Fish Restoration and Management Projects, and for other Purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of co-operative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be diverted for any other purpose than the administration of the Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and game.

Nothing in this section shall be construed to prohibit the exercise of any of the powers granted to the Wildlife Resources Commission under the provisions of this article. (1951, cc. 316, 405.)

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§ 143-255. Commission created; members appointed.—There is hereby created a commission to be known as the North Carolina National Park, Parkway and Forests Development Commission, which Commission, in addition to the duties hereafter specified, shall succeed to the general functions heretofore exercised by those commissions and agencies referred to in former §§ 113-78 to 113-81 and in repealed chapter 48 of the Public Laws of 1927. The Commission hereby created shall consist of seven members, one member of which shall be a resident of Buncombe county, one member a resident of Haywood county, one member a resident of Jackson county, one member a resident of Swain county, three members residents of counties adjacent to or affected by the development or completion of the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala National Forests. The chairman of the State Highway and Public Works Commission and the Director of the Department of Conservation and Development, shall be ex officio members of the Commission. There shall be transferred to the Commission herein created all records, documents, accounts, funds, appropriations and all other properties and interests whatsoever heretofore owned or held by any commission or agency under the provisions of article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended, and the Commission herein created is hereby authorized to receive, hold, use, convey and expend the same, subject to the approval of the Director of the Budget, and in furtherance of the purposes of this article. (1947, c. 422, s. 3.)

§ **143-256. Appointment of commissioners; term of office.**—On or before July 1st, 1947, the Governor of North Carolina shall appoint seven members of the original Commission, two to serve for two years, two to serve for four years, and three to serve for six years, and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of six years. Members of the Commission shall be eligible for reappointment. The Governor shall also accept the resignation of members of the Commission and shall appoint members to serve the unexpired terms caused by the resignation or death of any of the members of the Commission. (1947, c. 422, s. 4.)

§ **143-257. Meetings; election of officers.** — The Commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Commission, but the secretary need not be a member of the Commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacancies by registration or death, the office shall be filled by the Commission for the unexpired term of said officer. The Commission shall meet monthly at the time and place designated by its chairman, or upon order duly made by the Commission it shall meet only upon call of its chairman. The Commission shall adopt such other rules, regulations and bylaws governing the operation of the Commission as it shall deem necessary. Five members of the Commission shall constitute a quorum for the transaction of business. (1947, c. 422, s. 5.)

§ **143-258. Duties of the Commission.**—The Commission shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah National Forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway, or the Pisgah or Nantahala National Forests. It shall be the duty of the Commission to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissions and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas, but shall not in any manner take over or supplant these agencies in their work in this area, except in so far as expressly provided in this article in respect to those commissions and agencies provided for in article 6 of chapter 113 of the General Statutes of North Carolina, as amended, or chapter 48 of the Public Laws of 1927, as amended. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out over-all programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the North Carolina State Highway and Public Works Commission. (1947, c. 422, s. 6.)

§ **143-259. The Commission to make reports.** — The Commission shall make a biennial report to the Governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development and the State Highway and Public Works Commission in respect to such matters as might be of interest to, or affect such Department or Commission. (1947, c. 422, s. 7.)

§ **143-260. Compensation of commissioners.**—The members of the Commission shall receive their necessary traveling expenses incurred while attending meetings of the Commission and also such additional traveling expenses in connection with the business of the Commission as shall be approved by the Director of the Budget. (1947, c. 422, s. 8.)

ARTICLE 26.

State Education Commission.

§ **143-261. Appointment and membership; duties.**—The Governor of North Carolina is hereby authorized to appoint a commission to be known as the State Education Commission, consisting of eighteen members, six of whom shall be selected from educational groups within the State, and twelve of whom shall be selected from the agricultural, business, industrial, and professional life of the State. It shall be the duty of this Commission to study all educational problems to the end that a sound overall educational program may be developed in North Carolina, and to report their findings and make recommendations to the Governor and the General Assembly of 1949. (1947, c. 724, s. 1.)

§ **143-262. Organization meeting; election of officers; status of members.**—After their appointment, the Commission shall meet in the office of the Governor of North Carolina not later than the 15th of May, 1947, and upon the recommendation of the Governor, elect a chairman and a full time executive secretary. The secretary may or may not be a member of the Commission. Membership on the Commission herein authorized shall not constitute public office but shall be considered as a commissioner for a special purpose; and the Governor may appoint as ex officio member, or members, on said Commission any public official without violating the provisions of article XIV, § 7, of the State Constitution. (1947, c. 724, s. 2.)

§ **143-263. Comprehensive study of education problems.**—This Commission shall make a comprehensive study of organization, administration, finance, teacher education, supervision, curriculum, standardization, consolidation, transportation, buildings, personnel, a merit rating system for teachers, vocational education, and any other problems related to the overall educational program of the State. (1947, c. 724, s. 3.)

Cross Reference. — As to authority of State Board of Education to continue study, see note under § 115-19.

§ **143-264. Per diem and travel allowances.**—Each member of the Commission shall be entitled to per diem and travel the same as is paid to the State Board of Education, when attending any meeting of the Commission or while engaged in the performance of any duties of the Commission. (1947, c. 724, s. 4.)

§ **143-265. Salary of executive secretary.**—The Commission is authorized to set the salary of a full time executive secretary, with the approval of the Director of the Budget. (1947, c. 724, s. 5.)

§ **143-266. Powers of executive secretary.**—The executive secretary of the Commission shall have the authority and power to subpoena witnesses and compel their attendance to testify and/or produce records at any hearing before the Commission, or any committee thereof, under the same provisions of the law as now apply to attendance of witnesses before legislative committees. (1947, c. 724, s. 6.)

Article 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ **143-267. Release and payment of funds to State Treasurer; delivery of other assets to Director of the Division of Purchase and Contract.**—Whenever the statutes creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the Supreme Court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the State Treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the Director of the Division of Purchase and Contract for the State of North Carolina. (1949, c. 740, s. 1.)

§ **143-268. Official records turned over to Department of Archives and History; conversion of other assets into cash; allocation of assets to State agency or department.**—The Director of the Division of Purchase and Contract shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the Department of Archives and History, to be held pursuant to the statutes relating to such Department. The Director of the Division of Purchase and Contract shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such sale with the State Treasurer: Provided, that the Director of the Division of Purchase and Contract, in his discretion, may allocate to any State agency or department, the whole or any part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2.)

§ **143-269. Deposit of funds by State Treasurer.**—The State Treasurer shall receive all funds delivered to him under this article and shall deposit the same in a special fund for the account of the board or agency whose affairs are being liquidated, to be held and applied as hereinafter provided. (1949, c. 740, s. 3.)

§ **143-270. Statement of claims against board or agency; time limitation on presentation.**—Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this article, may present a verified statement of the same to the Director of the Division of Purchase and Contract, who shall investigate and approve or disapprove such claim; any claim not presented to the Director of the Division of Purchase and Contract within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4.)

§ **143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina.**—The Director of the Division of Purchase and Contract shall certify to the State Treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the State Treasurer shall, out of the funds in his hands for the account of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment in so far as funds are available. Should any balance remain in the hands of the Treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5.)

§ **143-272. Audit of affairs of board or agency; payment for audit and other expenses.**—Irrespective of the provisions of § 143-271 of this article, the State Treasurer is specifically authorized, in his discretion, to cause an audit to be made of the affairs of any such board or agency, and to immediately pay the cost of such audit, together with the expenses of transferring records and assets, and other necessary costs of liquidation, out of the first funds coming into his hands for the account of such board or agency. (1949, c. 740, s. 6.)

Article 28.

Communication Study Commission.

§ **143-273. Creation of Commission.**—There is hereby created an agency to be known as the North Carolina Communication Study Commission, which shall function for four years pursuant to the provisions of this article. (1949, c. 1077, s. 1.)

§ **143-274. Definitions.**—As used in this article.

(1) "Communication" is defined as those methods, namely radio, motion pictures, still photography, slides, film strips, models, maps, charts, illustrated publications, facsimile and television, by means of which activities and materials of an educational nature are disseminated to the people of North Carolina at pre-school, primary, secondary, college, and adult levels.

(2) "Commission" means the North Carolina Communication Study Commission.

(3) "Committee" means the Advisory Communication Committee of the North Carolina Communication Study Commission. (1949, c. 1077, s. 2.)

§ **143-275. Membership of Commission; term.**—(1) The Commission shall consist of the Governor, Superintendent of Public Instruction, and Director of the Department of Conservation and Development, as members ex officio, together with seven members appointed by the Governor.

(2) In making appointment to the Commission, the Governor shall choose three persons who understand the entire educational program of the State, two persons from the field of radio and two persons who shall represent business in the State. The Commission shall elect with the approval of the Governor one member to act as chairman. A majority of the Commission shall constitute a quorum.

(3) The seven members appointed by the Governor shall serve for a term of four years, from July 1, 1949, through June 30, 1953.

(4) Any appointed member of the Commission may be removed by the Governor.

(5) Vacancies in the Commission shall be filled by the governor for the unexpired term.

(6) The Commission shall meet quarterly, in January, April, July, and October, on a date to be fixed by the chairman. The Commission may be convened at such other times as the Governor or chairman may deem necessary.

(7) Members of the Commission shall be paid seven dollars ($7.00) per day

for each day required in attendance on meetings of the Commission and going to and returning from meetings and the same subsistence and travel allowance for attendance at meetings as is provided for State employees. (1949, c. 1077, s. 3.)

§ **143-276. Duties of Commission.**—It shall be the duty of the Commission:

(1) To survey, study and appraise the need in North Carolina for an overall plan in the use of all methods of educational communication at all levels of education in North Carolina;

(2) To survey, study and appraise the potential uses of these educational communication methods in North Carolina's program of conservation and development of natural, industrial and human resources;

(3) To survey, study and appraise the potentialities which might lead to more effective co-operation among the communication industries and between the communication industries and the educational institutions;

(4) To survey, study and appraise the need and procedure for setting up facilities to train communication specialists and to train teachers in the use of communication equipment and materials in the classroom;

(5) To survey, study and appraise the educational use of radio, television, motion pictures and any other methods of educational communication which may come to the attention of the Commission;

(6) To guide the growth and development of educational communication in North Carolina as it relates to the education, health, economy and general welfare of the people of North Carolina;

(7) To co-operate in the promotion of local, regional and State-wide use of all methods of educational communication as they relate to the education, health, economy and general welfare of the people of North Carolina;

(8) To establish and promote educational communication standards;

(9) To co-operate with state and federal communication agencies, the Communication Advisory Committee, and with commercial communication interests in the promotion of educational opportunities through the methods of educational communication;

(10) To recommend biennially on the basis of its surveys, studies and appraisals specific actions to the General Assembly;

(11) To submit a biennial report of its activities to the Governor and the General Assembly. (1949, c. 1077, s. 4.)

§ **143-277. Powers of Commission.**—The Commission is hereby authorized:

(1) To make rules and regulations for the proper administration of its duties;

(2) To accept any grant of funds made by the United States or any agency thereof for the purpose of carrying out its functions;

(3) To accept gifts, bequests, devises and endowments. The funds, if given as an endowment, shall be invested in such securities as designated by the donor, or, if there is no designation, in those in which the State Sinking Fund may be invested. All such gifts, bequests, devises, and all proceeds from such invested endowments shall be used for carrying out the purpose for which they are made;

(4) To administer all funds available to the Commission;

(5) To act jointly when advisable with any other State agency, institution, department or commission in order to carry out the Commission's objectives and responsibilities. No activity of the Commission, however, shall be allowed to interfere with the work of any other State agency; provided, however, that the work of the commission shall, to the extent possible, be co-ordinated with the work and objectives of the Department of Education.

(6) To employ, with the approval of the Governor, an executive director,

and upon the recommendation of the executive director, such other persons and/or companies as may be needed to carry out the provisions of this article. The executive director shall act as secretary to the Commission;

(7) To do any and all other things reasonably necessary to carry out the purposes of this article. (1949, c. 1077, s. 5.)

§ **143-278. Advisory Committee.**—The Governor shall name a Communication Advisory Committee consisting of thirty members who shall serve for a term of two years, from July 1, 1949, to July 1, 1951, and their successors shall be appointed for a term of two years beginning July 1, 1951, and ending June 30, 1953. The Governor shall name one member to act as a chairman of the Committee. Vacancies occurring on the Committee shall be filled by the Governor for the unexpired term. Members of the Committee shall be representative in so far as possible of North Carolina education in general, the communication industries of North Carolina, and all other groups who might derive benefit from or be beneficial to education in North Carolina.

The Committee shall meet at least once each year with the Commission at times and places to be fixed by the Governor. Members of the Committee shall serve without compensation, but shall be paid the same subsistence and travel allowance for attendance at meetings as is provided for State employees.

The Committee shall act in an advisory capacity to the Commission. It shall help the Commission in every way possible by means of suggestion, discussions, and knowledge of educational needs throughout the State in the advancement of educational opportunities through the methods of communication. (1949, c. 1077, s. 6.)

Article 29.

Commission to Study the Care of the Aged and Handicapped.

§ **143-279. Establishment and designation of Commission.**—A Commission is hereby established for the study of the problems relating to the care of the aged with especial reference to those failing mentally and the intellectually or physically handicapped of all ages and this Commission shall be known as "the Commission for the Study of Problems of the Care of the Aged and Intellectually or Physically Handicapped. (1949, c. 1211, s. 1.)

§ **143-280. Membership.**—The Commission shall consist of one member from the North Carolina Hospitals Board of Control, one member from the State Board of Health, one member from the State Board of Public Welfare, one member from the boards of county commissioners, one county superintendent of public welfare, one county health officer, one clerk of the superior court. (1949, c. 1211, s. 2.)

§ **143-281. Appointment and removal of members.** — The Governor shall appoint the members of this Commission, and may remove any member; he shall not be required to give any reason for the removal of any member. (1949, c. 1211, s. 3.)

§ **143-282. Duties of Commission; recommendations.**—This Commission shall study the problems relating to the care of the aged with especial reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the care of the feeble-minded, with especial attention to the custodial care of intellectually handicapped persons not teachable or trainable. It shall make a study of the problems relating to the care of the physically handicapped with a special reference to those whose physical handicap renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the Governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the State and respective counties. (1949, c. 1211, s. 4.)

§ **143-283. Compensation.**—The members of the Commission shall receive for each day in actual performance of duties under this article, a per diem of seven dollars ($7.00), and necessary travel and subsistence expenses, to be paid out of the contingency and emergency fund. (1949, c. 1211, s. 5.)

Article 30.

Buggs Island Development Commission.

§ **143-284. Commission created; membership; terms of office; vacancies.** — There is hereby created a Commission to be known as the "Buggs Island Development Commission." The Commission hereby created shall consist of 10 members to be appointed by the Governor. One member of said Commission shall be a resident of Vance County; one member shall be a resident of Granville County and one member shall be a resident of Warren County and four members shall be appointed from the eastern section of North Carolina as members at large, one member shall be appointed from the membership of the Wildlife Resources Commission, one member shall be appointed from the membership of the Board of Conservation and Development, and one member shall be appointed from the membership of the North Carolina Recreation Commission. The members appointed from the Board of Conservation and Development, and the Wildlife Resources Commission and the North Carolina Recreation Commission shall serve as ex officio members of the Commission created by this article, and shall serve on this Commission in such capacity only during the tenure of their terms as members of the Board of Conservation and Development and the Wildlife Resources Commission and the North Carolina Recreation Commission respectively. Of the other seven members to be appointed to this Commission two shall serve for two years, two shall serve for four years, and three shall serve for six years and as the terms of these commissioners expire, the Governor shall thereafter appoint members of the Commission to serve for terms of six years. The Governor shall accept resignations of members of the Commission and shall appoint members to serve the unexpired terms of those caused by resignation, death or otherwise. Members of the Commission created by this article shall be appointed by the Governor on or before the first of July, 1951. (1951, c. 444, s. 1.)

§ **143-285. Officers of Commission; meetings; rules, regulations and bylaws; quorum.**—The Commission shall at its first meeting elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Commission, but the secretary need not be a member of the Commission. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be re-elected. In case of vacancies by resignation or death, the office shall be filled by the Commission for the unexpired term of said officer. The Commission shall meet at such times and places as may be designated by its chairman and may also be called at such times as may be requested by any three members of the Commission. The Commission shall adopt such other rules, regulations and bylaws governing the operation of the Commission as it shall deem necessary. Five members of the Commission shall constitute a quorum for the transaction of business. (1951, c. 444, s. 2.)

§ **143-286. Powers and duties.** — The Commission shall endeavor to promote the development of the Buggs Island area situated in northeastern North Carolina, and it shall be the duty of the Commission to study the development of this area and to recommend to the Department of Conservation and Development, and the Wildlife Resources Commission and the North Carolina Recreation

Commission policies that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation. It shall confer with the various departments, agencies, commissions and officials of the federal government and the governments of the adjoining states in connection with the development of this Buggs Island area. It shall also advise and confer with any other State officials or agencies or departments in the State of North Carolina that may be directly or indirectly concerned in the development of the resources of this area, but it shall not in any manner take over or supplant any agencies in their work in this area except so far as is expressly provided for in this article. It shall also advise and confer with various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall have full power and authority to confer with any similar commission created or acting in that part of the area lying in the state of Virginia for the purpose of working out uniform practices and plans affecting the entire area in both states. (1951, c. 444, s. 3.)

§ **143-287. Biennial report; suggestions and recommendations.**—The Commission shall make a biennial report to the governor covering its work up to January 1st preceding each session of the General Assembly. It shall also file any such suggestions or recommendations as it deems proper with the Department of Conservation and Development, the Wildlife Resources Commission and the North Carolina Recreation Commission in respect to such matters as might be of interest to or affect such Department or Commission. (1951, c. 444, s. 4.)

§ **143-288. Expenses.**—The actual travel and subsistence expenses incurred by the ex officio members of the Commission shall be paid from the funds of the respective agencies. The other members of the Commission shall receive their necessary traveling expenses incurred while attending meetings of the Commission and also such additional traveling expenses in connection with the business of the Commission as shall be approved by the Director of the Budget, which expenses shall be paid from funds of the Commission created by this article when such funds have been provided from the sources hereinafter referred to. (1951, c. 444, s. 5.)

§ **143-289. Contributions from certain counties and municipalities authorized; other grants or donations.**—The boards of county commissioners of the counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Commission for the purpose of defraying the necessary expenses of operation and the Commission is authorized and empowered to accept grants or donations from any interested citizens or from any state or federal agency. (1951, c. 444, s. 6.)

§ **143-290. Requests for funds.**—The Wildlife Resources Commission and the Department of Conservation and Development and the North Carolina Recreation Commission are authorized and empowered to include in their budget request for funds to aid and support the work of the Commission. (1951, c. 444, s. 7.)

Article 31.

Tort Claims against State Departments and Agencies.

§ **143-291. Industrial Commission constituted a court to hear and determine claims; damages.**—The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the State Highway and Public

Works Commission, and all other departments, institutions, and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of a State employee while acting within the scope of his employment and without contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted. If the Commission finds that there was such negligence on the part of a State employee while acting within the scope of his employment which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of eight thousand dollars ($8,000.00). (1951, c. 1059, s. 1.)

Editor's Note. — Section 13 of the act inserting this article lists numerous claims against the various State departments, institutions and agencies, which "shall be heard and determined by the Industrial Commission as provided in this act, and each claimant upon request shall furnish the Industrial Commission the information provided for" in § 143-297.

§ **143-292. Notice of determination of claim; appeal to full Commission.**—Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have seven days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. (1951, c. 1059, s. 2.)

§ **143-293. Appeals to superior and Supreme Courts.** — Either the claimant or the State may, within 30 days of the date of the decision and award of the full Commission or within 30 days after receipt of such decision and award, to be sent by registered mail but not thereafter, appeal from the decision of the Commission to the superior court of the county in which the claim arose. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them: Provided, the Commission shall have 60 days after receipt of notice of appeal, properly served on the opposing party and the Industrial Commission, within which to prepare and furnish to the appellant or his attorney a certified transcript of the record in the case for filing in the superior court, and the time for docketing said appeal shall not begin to run until this transcript has been furnished to the appellant or his attorney. Either party may appeal from the decision of the superior court to the Supreme Court as in ordinary civil actions. (1951, c. 1059, s. 3.)

§ **143-294. Appeal to superior court to act as supersedeas.**—The appeal from the decision of the Industrial Commission to the superior court shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this article. (1951, c. 1059, s. 4.)

§ **143-295. Settlement of claims.**—Any claim hereinafter listed, or any other claim hereinafter filed with the Industrial Commission, may be settled upon agreement between the claimant and the department, institution, or agency of the State involved without a formal hearing. Such settlements shall be subject to approval, however, by the office of the Attorney General of North Carolina with reference to all claims against all departments, institutions, and agencies of the State other than the State Highway and Public Works Commission, and settlements of claims against the State Highway and Public Works Commission shall be subject to approval by the chief counsel of that department, and all settlements shall be subject to approval by the North Carolina Industrial Commission. (1951, c. 1059, s. 5.)

§ 143-296. Powers of Industrial Commission; deputies.—The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpeonas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workmen's Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6.)

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing. — In all claims listed in § 13 of chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

(a) The name of the claimant;

(b) The name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based;

(c) The amount of damages sought to be recovered;

(d) The time and place where the injury occurred;

(e) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agreee that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State other than the State Highway and Public Works Commission. If the claim is asserted against the State Highway and Public Works Commission, one copy of said affidavit shall be forwarded to the chief counsel for that department. (1951, c. 1059, s. 9.)

§ 143-298. Duty of Attorney General; expenses.—It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State other than the State Highway and Public Works Commission in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the contingency and emergency fund. (1951, c. 1059, s. 10.)

§ **143-299. Limitation on claims.**—All claims against any and all State departments, institutions, and agencies, except the claims enumerated in § 13 of chapter 1059 of the Session Laws of 1951, shall be forever barred unless a claim be filed with the Industrial Commission within two years after the accident giving rise to the injury and damage, and if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative with the Industrial Commission within two years after such death. (1951, c. 1059, s. 11.)

§ **143-300. Rules and regulations of Industrial Commission.**—The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this article. (1951, c. 1059, s. 12.)

Article 32.

Payroll Savings Plan for State Employees.

§ **143-301. Authority of Governor.**—The Governor may, with the approval of the Council of State, authorize any or all of the departments, institutions, and agencies of the State to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees, and to set up the necessary machinery for carrying out the purposes of this article. (1951, c. 1020, s. 1.)

§ **143-302. Expenses.**—Funds may be allotted out of the contingency and emergency appropriation to defray the necessary expenses incurred by departments, institutions and agencies financed out of the general fund of the State, and departments, institutions and agencies financed out of special funds or entirely from receipts shall defray the necessary expenses incurred without expense to the general fund of the State. (1951, c. 1020, s. 2.)

§ **143-303. Agreements of employees with heads of departments, etc.**—Any of the employees of the State of North Carolina may voluntarily enter into written agreement with heads of the department or institution or agency where employed, which has adopted the payroll savings plan, to authorize deductions from his or her salary of certain designated sums to be invested in United States savings bonds of the kind and type specified in such agreement. (1951, c. 1020, s. 3.)

§ **143-304. Salary deductions and purchase of bonds authorized.**—Upon the execution of such agreement by any State employee with the State department, institution or agency where employed, the department, institution or agency is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee, and to show deduction on all pay rolls similar to withholding tax, retirement, insurance, hospitalization, etc. Such sums shall be held until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sum shall be invested in United States savings bonds, for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practical. Provided that no coercion of any sort shall be exercised to require any person to participate. (1951, c. 1020, s. 4.)

§ **143-305. Cancellation of agreements.**—Such agreement may be cancelled by the employee executing the same upon giving written notice to the head of the department, institution or agency where employed not later than the

15th day of the month in which he or she desires such agreement to be terminated, and the head of the department, institution or agency may cancel any agreement, herein provided for, upon giving ten days' written notice to the affected employee. Upon the termination of the agreement the head of the department, institution or agency is hereby authorized to refund any amount of money held for the employee. (1951, c. 1020, s. 5.)

Chapter 144.

State Flag, Motto and Colors.

Sec.
144-1. State flag.
144-2. State motto.
144-3. Flags to be displayed on public buildings and institutions.
144-4. Flags to be displayed at county courthouses.
144-5. Flags to conform to law.
144-6. State colors.

§ **144-1. State flag.** — The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one-third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one-third more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776." (1885, c. 291; Rev., s. 5321; C. S., s. 7535.)

§ **144-2. State motto.**—The words "esse quam videri" are hereby adopted as the motto of this State, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat-of-arms of the State as a part thereof. On the coat-of-arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (1893, c. 145; Rev., s. 5320; C. S., s. 7536.)

§ **144-3. Flags to be displayed on public buildings and institutions.**—The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place. (1907, c. 838, s. 2; C. S., s. 7537.)

§ **144-4. Flags to be displayed at county courthouses.**—The boards of county commissioners of the several counties in this State shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the State, and the State flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C. S., s. 7538.)

§ **144-5. Flags to conform to law.**—No State flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the State flag contained in this chapter. (1907, c. 938, s. 4; C. S., s. 7539.)

§ **144-6. State colors.**—Red and blue, of shades as adopted and appearing in the North Carolina State flag and the American flag, shall be, and hereby are, declared to be the official State colors for the State of North Carolina.

The use of such official State colors on ribbons attached to State documents with the great seal and/or seals of State departments is permissive and discretionary but not directory. (1945, c. 878.)

Chapter 145.

State Flower and Bird.

Sec.
145-1. Dogwood adopted as official flower.
145-2. Cardinal declared official State bird.

§ **145-1. Dogwood adopted as official flower.**—The Dogwood is hereby adopted as the official flower of the State of North Carolina. (1941, c. 289.)

§ **145-2. Cardinal declared official State bird.**—The Cardinal is hereby declared to be the official State bird of North Carolina. (1943, c. 595.)

Chapter 146.

State Lands.

SUBCHAPTER I. ENTRIES AND GRANTS.

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146-19. Annual returns.
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Article 11.

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146-92. Actions by Board; counsel; compromise.
146-93. Agreement with others to prosecute or survey.

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Sale of Lands.

146-94. Sale of swamp lands.
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146-96. Forfeiture for failure to register deeds.
146-97. Withdrawal of swamp lands from sale under certain conditions; lease or sale to Department of Conservation and Development.
146-98. State Board of Education authorized to transfer lands, Pender and Onslow counties, for development as game refuge.
146-99. State Board of Education authorized to convey or lease marsh and swamp lands to State Department of Conservation and Development.
146-100. Conveyances to contain reversionary clause.
146-101. Board to retain mineral, gas, oil and similar rights.

SUBCHAPTER I. ENTRIES AND GRANTS.

Article 1.

Lands Subject to Grant.

§ 146-1. Vacant lands; exceptions.—All vacant and unappropriated lands belonging to the State shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except:

1. Lands covered by navigable waters.

2. Lands covered by the waters of any lake, or which, though now covered, may hereafter be gained therefrom by the recession, draining, or diminution of such waters, or have been so gained heretofore and not lawfully entered.

3. Marsh or swamp land, where the quantity of land in any one marsh or swamp exceeds two thousand acres, or where, if of less quantity, the same has been surveyed by the State, or by the State Board of Education, with a view to draining and reclaiming the same. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; Rev., s. 1693; C. S., s. 7540.)

Cross References.—As to definition of "swamp lands", see § 146-4. As to lands covered by "navigable water," see § 146-6 and note.

Effect of Grant. — Lands once granted by the State to individual citizens do not become "vacant lands" within the meaning of the statute, where the State subsequently acquires title to them but abandons the actual use to which they were put. State v. Bevers, 86 N. C. 588 (1882).

Swamp lands, within the meaning of this section are those too wet for cultivation except by drainage. Beer v. Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024 (1915).

Swamp lands of two creeks may be separate and not subject to the same application of this section though it appears that sometimes during freshets and high water these are all covered with one sheet of water. Beer v Whiteville Lumber Co., 170 N. C. 337, 86 S. E. 1024 (1915).

A tract of land within the area of swamp lands coming within the meaning of this section need not necessarily be free from knolls or higher and drier places. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912).

Tidelands.—The fact that tidelands conveyed by the State Board of Education are thereafter filled in and reclaimed by the purchaser does not divest the title of the purchaser, since the conveyance is of the fee and not an easement in the lands. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

Grant Impeding Navigation.—In respect to navigable waters the State has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

Grants to Land Not Subject to Entry.—An entry made to swamp land when the body contains more than 2,000 acres is void, and a grant under such entry is void. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912). See Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

Applied in Davis v. Morgan, 228 N. C. 78, 44 S. E. (2d) 593 (1947).

§ **146-2. What swamp lands subject to grant.**—Marsh or swamp lands, lying in a swamp where the quantity of land does not in the whole swamp or marsh exceed two thousand acres, and which has not been surveyed by the State or State Board of Education, and marsh or swamp lands, unsurveyed as aforesaid, not exceeding fifty acres in one body, though lying within a marsh or swamp of a greater number of acres than two thousand, may be entered, when the same shall be situated altogether between the lines of tracts heretofore granted. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; Rev., s. 1694; C. S., s. 7541.)

§ **146-3. Department of Conservation and Development to locate land subject to entry.**—The State Department of Conservation and Development is hereby directed to investigate and locate all vacant and unappropriated lands now subject to entry and grant as described in §§ 146-1 and 146-2, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon, and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. If upon such report the Governor should determine that it is to the interest of the State that any particular parcel of such land should be devoted to such purposes, he shall recommend to the next succeeding session of the General Assembly the withdrawal of such parcel or parcels of land from entry, and immediately upon the publication of such proclamation, such parcel or parcels of land shall be devoted to the public purpose designed and specified. Upon such withdrawal from entry such parcel or parcels of land shall be administered for the purposes to which it is devoted by the said State Department of Conservation and Development. (1927, c. 83, s. 1.)

§ **146-4. Swamp lands defined.** — The words "marsh and swamp land" wherever employed in this chapter, and the words "swamp lands" employed in the statutes creating the Literary Fund and Literary Board of North Carolina and the State Board of Education of North Carolina, or in any act in relation thereto, shall be construed to include all those lands which have been or may now be known and called "swamp" or "marsh" lands, "pocosin bay," "briary bay," and "savanna," and all lands which may be covered by the waters of any lake or pond. (1891, c. 302; Rev., s. 1695; C. S., s. 7542.)

Cross Reference.—See note to § 146-1.

Cited in Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938); Kelly v. King, 225 N. C. 709, 36 S. E. (2d) 220 (1945).

§ **146-5. Investigating and locating marsh or swamp lands.** — The State Department of Conservation and Development is hereby directed to investigate and locate the body or bodies, or parcel or parcels of marsh or swamp land, the title to which is now vested in the State Board of Education under §§ 146-1 and 146-4, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. Upon such report to the Governor, he shall bring the matter to the attention of the next succeeding session of the General Assembly and if his recommendation thereupon is approved by the General Assembly, said parcel or parcels of marsh or swamp lands shall be withdrawn from sale and shall be administered for the benefit of the people of the State for the purposes set out in this act by said Department of Conservation and Development. (1927, c. 83.)

§ **146-6. Land covered by water, for wharves.**—Persons owning lands on any navigable sound, river, creek or arm of the sea, for the purpose of erecting wharves on the side of the deep waters thereof, next to their lands, may make entries of the lands covered by water, adjacent to their own, as far as the deep water of such sound, river, creek, or arm of the sea, and obtain title as in other cases. But persons making such entries shall be confined to straight lines, including only the fronts of their own tracts, and shall in no respect obstruct or impair navigation. When any such entry shall be made in front of the lands in any incorporated town, the town corporation shall regulate the line on deep water to which wharves may be built. This shall not affect existing rights. For all lands thus entered there shall be paid into the treasury not less than one dollar per acre. When any person has erected a wharf on public lands of the description aforesaid, before the first of January, one thousand nine hundred and three, such person shall have liberty to enter such land, including his wharf, under the restrictions and upon the terms above set forth: Provided, no land covered by water shall be subject to entry within thirty feet of any wharf, pier or stand used as a wharf in existence, or which may hereafter be erected by any person on his own land or land under his control, or on an extended line thereof; but land covered by water as aforesaid for the space of thirty feet from the landing place or line of any wharf, pier or stand used as a wharf, as aforesaid, shall remain open for the free ingress and egress of the owner and other persons to and from such wharf, pier, or stand: Provided, further, no person shall be allowed to enter and obtain a grant for any land in the waters of Onslow County, in which the tide ebbs and flows, within thirty feet of the shore at low-water mark, unless the enterer shall be the owner of the adjacent shore. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C. S., s. 7543.)

Editor's Note. — In State v. Eason, 114 N. C. 787, 19 S. E. 88 (1894), it was held that a city whose limits extended to a navigable stream has jurisdiction only to the low-water mark. In view of this case it would seem that a city can only regulate the deep water line, for the purpose of entry when the stream is in the city, and it has not the power of regulating the deep water line when it extends only to the stream, unless so provided by its charter or express legislation.

Entry by Riparian Owner. — Navigable waters may be entered to the deep water line, for wharfage purposes, Barfoot v. Willis, 178 N. C. 200, 100 S. E. 303 (1919), but this right of entry is restricted to a riparian owner, and applies only to his immediate water front. Bond v. Wood, 107 N. C. 139, 12 S. E. 281 (1890).

A grant to a riparian owner of land covered by navigable water conveys only an easement therein, and a deed of the land adjoining the navigable water conveys the easement in the land covered by the water. Shephard's Point Land Co. v. Atlantic Hotel, 132 N. C. 517, 44 S. E. 39 (1903).

Regulating Deep Water Line by Mandamus.—Mandamus will lie by the riparian owner of land lying within the limits of an incorporated town, or city, to compel the town or city to "regulate the deep water line to which wharves may be built" as required by this section. Wool v. Edenton, 115 N. C. 10, 20 S. E. 165 (1894).

Prior to this case the court had held, because of the former wording of the statute, that a riparian owner in a city could not make an entry and the Secretary of State could not issue a grant until the line of deep water had been regulated by the municipal corporation. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294 (1891).

Rights Go with Land.—Riparian rights being incident to land abutting on navigable water cannot be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. Zimmerman v. Robinson, 114 N. C. 39, 19 S. E. 102 (1894); Land Co. v. Hotel, 134 N. C. 397, 46 S. E. 749 (1904). An adjacent riparian owner acquires only an easement in the bed of navigable waters in front of his shore lots for the purpose of building a wharf. Atlantic, etc., R. Co. v. Way, 172 N. C. 774, 90 S. E. 937 (1916).

Same—Fishing Rights. — The right to build a wharf in front of riparian property does not give the riparian owner exclusive fishing privilege in the navigable part of the stream on which his property fronts. But the riparian owner will be protected from wrongful interference. Beil v. Smith, 171 N. C. 116, 87 S. E. 987 (1916).

Erroneous Survey of the Deep Water Line.—In case the line marked out is not the deep water line a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. Wool v. Edenton, 117 N. C. 1, 23 S. E. 40 (1895).

Cited in Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

§ **146-7. Certain lakes not to be sold.**—White Lake, Black Lake, Waccamaw Lake, and any other lake in Bladen, Columbus, or Cumberland counties, containing five hundred acres or more, shall never be sold nor conveyed to any person, firm, or corporation, but shall always be and remain the property of the State of North Carolina for the use and benefit of all the people of the State. (1911, c. 8; C. S., s. 7544.)

§ **146-8. Recreational use of State lakes regulated.**—All recreation, including hunting, fishing, etc., in, upon or above, any or all of the State lakes, referred to in § 146-7 and subsequent laws, may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1.)

Local Modification. — Craven: 1933, c. 516, s. 5.

§ **146-9. Fish breeding protected.** — For the purpose of protecting the breeding grounds of the fish inhabiting these State lakes, the administrative authority in control of said lakes may extend to the waters of all streams running into said lakes, so that such regulations relating to fishing, as in the opinion of such authority will help to accomplish such purpose, may be put into effect. (1933, c. 516, s. 2.)

Local Modification. — Craven: 1933, c. 516, s. 5.

§ **146-10. Erection of piers, etc.; permits.**—No person, firm or corporation shall erect upon the floor of, or in or upon, the waters of any State lake which is State property, any dock, pier, pavilion, boathouse, bathhouse, or other structure without first having secured a permit to do so from the State agency in charge of such State property. Said permit must set forth in required detail the size, cost and nature of such structure, and any person, firm or corporation erecting any such structure, without a proper permit or not in accordance with the specifications of said permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50 or imprisoned not exceeding thirty days. The State being the owner of the property may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3.)

Local Modification. — Craven: 1933, c. 516, s. 5.

§ **146-11. Fishing license fees for nonresidents of counties in which State lakes are situated.** — The Department of Conservation and Development, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Department relating to said lake, as follows: A one-day permit, 35 cents; a two-day permit, 50 cents; a weekly permit, $1. With the exception of the features of this section, the laws and regulations dealing with the issuance of fishing permits by said Department must be complied with. (1933, c. 516, s. 4.)

Local Modification. — Craven: 1933, c. 516, s. 5.

§ **146-12. State lakes of 50 acres or more prohibited from ever being sold.**—All lakes now belonging to the State, having an area of fifty acres or more, shall never be sold nor conveyed to any person, firm or corporation, but shall always be and remain the property of the State of North Carolina for the use and benefit of all the people of the State to be administered as provided for other recreational areas now owned or to be acquired by the State. (1929, c. 165.)

§ **146-13. Void grants; not color of title.**—Every entry made, and every grant issued, for any lands not authorized by this subchapter to be entered or granted, shall be void; and every grant of land made since the sixth day of March, one thousand eight hundred and ninety-three, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this State, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (R. C., c. 42, s. 2; Code, s. 2755; 1893, c. 490; Rev., s. 1699; C. S., s. 7545.)

In General. — Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. Berry v. Lumber Co., 141 N. C. 386, 54 S. E. 278, (1906).

Under the express provisions of this statute where land in controversy has been previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. Johnston v. Kramer Bros. & Co., 203 F. 733 (1913).

The State's grant of land was held not

invalid under this section where land conveyed by the grant had not been covered by any previous grant. Peterson v. Sucro, 101 F. (2d) 282 (1939).

State Not Interested in Conflicting Grants.—A protest to the entry raises the issue of title solely between the enterer and protestant, in which the State is not interested, the burden being on the enterer to prove the protestant's grant does not cover the land described in his entry. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Title by Adverse Possession. — Where upon protest to the entry of the State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Title to Lappage by Adverse Possession.—To mature a title under the junior grant, there must be shown adverse and exclusive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. McLean v. Smith, 106 N. C. 172, 11 S. E. 184 (1890); Boomer v. Gibbs, 114 N. C. 76, 19 S. E. 226 (1894); Currie v. Gilchrist, 147 N. C. 648, 61 S. E. 581 (1908); Blue Ridge Land Co. v. Floyd, 167 N. C. 686, 83 S. E. 687 (1914); Carolina Central Land Co. v. Potter, 189 N. C. 56, 127 S. E. 343 (1925).

Application to Grants Since March 6, 1893.—This section providing that a junior grant shall not be color of title so far as it covers land previously granted, applies by its terms only to grants issued since March 6, 1893. Weaver v. Love, 146 N. C. 414, 59 S. E. 1041 (1907); Land Co. v. Western, 177 N. C. 248, 98 S. E. 706 (1919).

ARTICLE 2.

Entry-Taker.

§ **146-14. Election and term of office.**—The board of commissioners of the several counties shall elect one person to receive entries of claims for lands within each county; and such entry-taker shall hold his office for four years. (Code, s. 2756; Rev., s. 1700; C. S., s. 7546.)

Deputies Not Allowed.—The duties of the entry-taker are personal and cannot be performed by a deputy or any other person. Maxwell v. Wallace, 38 N. C. 593 (1845); Pearson v. Powell, 100 N. C. 86, 6 S. E. 188 (1888).

§ **146-15. Oath of office.** — The entry-taker shall take the oath of office prescribed in the chapter entitled Oaths. (1868-9, c. 173, s. 5; Code, s. 2760; Rev., s. 1703; C. S., s. 7547.)

§ **146-16. Fees of entry-taker.**—Entry-takers shall receive the following fees, and no other, namely: For an entry, including all services, forty cents; issuing each duplicate warrant, when thereto required, twenty-five cents; for posting and advertising, the applicant shall pay the entry-taker one dollar, and the costs of the newspaper advertisement. (R. C., c. 102, s. 32; 1870-1, c. 139, s. 3; Code, ss. 2765, 3744; 1903, c. 272, s. 3; Rev., s. 2801; C. S., s. 3920.)

§ **146-17. Bond required.**—Every entry-taker shall enter into bond in the sum of five hundred dollars, payable to the State, with sufficient surety, approved by the county commissioners, for the faithful discharge of the duties of his office. (1868-9, c. 173, s. 3; Code, s. 2758; Rev., s. 304; C. S., s. 7548.)

§ **146-18. Office of entry-taker at courthouse.**—The entry-taker shall keep his office at the courthouse of his county, or within one mile thereof, on pain of forfeiting one hundred dollars to the county, to be sued for by the county treasurer. (1868-9, c. 173, s. 4; Code, s. 2759; Rev., s. 1704; C. S., s. 7549.)

§ **146-19. Annual returns.**—Every entry-taker shall make return to the Secretary of State annually, on the first day of January, of all lands entered with him, under a penalty of two hundred dollars. (1796, c. 455, s. 9, P. R.; R. C., c. 42, s. 18; 1881, c. 265; Code, s. 2775; Rev., s. 1705; C. S., s. 7550.)

§ 146-20. Penalty for failure to make returns; how recovered.—The Secretary of State shall furnish the Attorney General, at every spring term of the superior court of Wake County, with a certificate of failure in every case where an entry-taker shall fail to make return according to law; and the Attorney General shall move for judgment against such entry-taker and his sureties, and the courts shall give judgment accordingly. (1833, c. 15; R. C., c. 42, s. 19; Code, s. 2776; Rev., s. 1706; C. S., s. 7551.)

§ 146-21. Warrants issued by successor in office.—In all cases where an entry is made, and the entry-taker dies or resigns before a warrant is issued thereupon, his successor shall issue a warrant. (1835, c. 19; R. C., c. 42, s. 15; Code, s. 2772; Rev., s. 1702; C. S., s. 7552.)

§ 146-22. Register of deeds acts in case of vacancy.—When a vacancy exists in the office of entry-taker, the register of deeds shall act as entry-taker until such vacancy is filled by an election by the commissioners. The register of deeds, in such case, shall take charge of the books belonging to the office, shall discharge all the duties and receive the emoluments, and shall be subject to the rules, regulations, and penalties prescribed for entry-takers. (1868-9, c. 100, s. 2; 1868-9, c. 173, s. 2; Code, s. 2757; Rev., s. 1701; C. S., s. 7553.)

ARTICLE 3.

Entries.

§ 146-23. Who entitled to make entries.—Any citizen of this State, and all persons who come into the State with the bona fide intent of becoming residents and citizens thereof, have the right and privilege of making entries of, and obtaining grants for, vacant and unappropriated lands. (1869-70, c. 19, s. 1; Code, s. 2754; Rev., s. 1692; C. S., s. 7554.)

Title of Nonresident Grantee. — A nonresident claiming under a State grant has a valid title, unless it appears that he did not conform to the statute in procuring the grant. The burden of proof is upon the plaintiff in setting aside a grant for any cause not appearing upon its face. Weaver v. Love, 146 N. C. 414, 59 S. E. 1041 (1907).

An alien has full capacity to hold land until his estate be divested by an office found or some other equally solemn sovereign act. Rouche v. Williamson, 25 N. C. 457 (1877); Johnson v. Eversole Lumber Co., 144 N. C. 717, 57 S. E. 518 (1907).

A nonresident coming here with the intention of becoming a bona fide resident, and entering vacant land, is of right entitled to recover grants for the same, provided he moved and settled here within the time required to perfect his entries. Mockridge v. Howerton, 72 N. C. 221 (1875).

Railroads Not Included. — A railroad company, having no power to acquire lands except that which is limited to railroad purposes, does not come within the intent and meaning of this section. Wallace v. Moore, 178 N. C. 114, 100 S. E. 237 (1919).

Enterer Must Show Land Is Vacant.—The burden is upon the enterer to sustain his right to make entry by showing such to be in substantial form a compliance with the statute, that the lands were vacant and unappropriated. Walker v. Carpenter, 144 N. C. 674, 57 S. E. 461 (1907).

§ 146-24. Entries in writing, with description of land.—The claimant of land shall produce to the entry-taker a writing, signed by such claimant, setting forth where the land is situated, the nearest watercourses and remarkable places, and such watercourses and remarkable places as may be therein, the natural boundaries and the lines of any other person, if any, which divide it from other lands; and every such writing shall be one-quarter sheet of paper at least. (1777, c. 114, s. 5, P. R.; 1783, c. 185, s. 11, P. R.; R. C., c. 42, s. 11; Code, s. 2765; 1885, c. 132; 1891, c. 70; 1893, cc. 120, 270; 1903, c. 272, s. 3; Rev., s. 1707; C. S., s. 7555.)

Rights Acquired by Entry.—By making the entry as prescribed by law the enterer does not acquire any title to the land, but only the right to call for a grant upon compliance with the statute. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294 (1891); Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

Rights Acquired by Floating Entry. — An entry that is so vague that the land claimed is not identified is a "floating entry" and unless the land is identified by survey in the required time such entry is not good against subsequent entry. Fisher v. Owen, 144 N. C. 649, 57 S. E. 393 (1907).

It was said in an early decision, Harris v. Ewing, 21 N. C. 369 (1836), that an entry is not absolutely void in any case, merely because it is not as "special" as the party could have made it by the use of all the indicia, internal and external, supplied by the act as evidence of identity, but it is valid or invalid in respect of a subsequent enterer according to the fact that he may or may not have sustained loss by the want of particularity in it. Cain v. Downing, 161 N. C. 592, 77 S. E. 764 (1913).

Applied in Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

§ **146-25. Duty of entry-taker.**—The entry-taker shall immediately endorse the same with the name of the claimant, the number of acres claimed, and date of the entry; and shall copy the same in a book well bound, and ruled with a large margin into spaces of equal distance, each space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin. The entry-taker shall thereupon cause a copy of the entry to be posted for thirty days at three public places in the township or townships in which the land covered by the entry is located. A copy of the entry shall also be posted for thirty days at the courthouse door of the county in which such land lies, and advertised for thirty days in a newspaper published at the county seat of such county. If there be no newspaper published in such county, then the advertisement provided for shall be made in the nearest newspaper. (Code, s. 2765; 1903, c. 272, s. 3; Rev., s. 1708; C. S., s. 7556.)

The purpose of the notice required by this section is to give information to the public. Any person who claims title or interest in the land covered by the entry has the right within the time provided for the publication of the notice and the advertisement, and not thereafter, to file his protest (Garrison v. Williams, 150 N. C. 674, 64 S. E. 783 (1909)), which should contain a denial that the land is vacant and unappropriated land belonging to the State, and allegations as to his claim or interest therein. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Entry Must Be Made by Entry Taker. —The entry must be made by the entry taker and an entry made by the claimant is void. The entry taker is not authorized by the statute to appoint a deputy. Pearson v. Powell, 100 N. C. 86, 6 S. E. 188 (1888).

An entry made by the wife of the entry taker in his absence is void, although he allowed her to make entries, and subsequently acquiesced to what she had done. Maxwell v. Wallace, 38 N. C. 593 (1845).

§ **146-26. Protest filed; bonds required.**—If any person shall claim title to or an interest in the land covered by the entry, or any part thereof, he shall, within the time of the advertisement as above provided, file his protest in writing with the entry-taker against the issuing of a warrant thereon; and upon the filing of such protest, the entry-taker shall certify copies of the entry and protest to the superior court; thereupon a notice shall be issued by the clerk of the superior court to both parties, commanding them to appear before the clerk in twenty days and file their respective bonds for costs as in other cases where the title to real estate is in controversy, and to the claimant to appear at the next term of the court and show cause why the entry shall not be declared inoperative and void. This section shall not deprive either party of the advantage of prosecuting or defending without giving bond, as provided in other cases. (Code, s. 2765; 1903, c. 272, s. 3; Rev., s. 1709; 1907, c. 66, s. 1; C. S., s. 7557.)

Purpose of Section. — The purpose of this statute is to protect a landowner's estate from irreparable damages by subsequent entries that might be fraudulent or mistaken. In re Drewery, 130 N. C. 342, 41 S. E. 937 (1902), overruling on rehearing. In re Drewery, 129 N. C. 457, 40 S. E. 208 (1901).

Grounds for Filing Protest. — Unless the entry by the claimant is to land claimed by the protestant, protest will not lie. This is the only ground for filing protest. Cain v. Downing, 161 N. C. 592, 77 S. E. 764 (1913).

Burden of Protestant. — The right to protest is not given to intermeddlers, but to those who claim title to or interest in the land (Lumber Co. v. Clarke, 152 N. C. 544, 67 S. E. 1057 (1910)), and the protestant is therefore required to assert his title or interest. Walker v. Parker, 168 N. C. 150, 85 S. E. 306 (1914).

If a protestant shows that he claims under a grant from the State and the claimant's entry is to the same land, the entry will be set aside. The protestant does not have to show a perfect claim of title as he would have to do in ejectment. Lumber Co. v. Coffey, 144 N. C. 560, 57 S. E. 344 (1907).

Protestant Can Only Show His Title.— A protestant can only enter evidence as to his title. A grant to land outside of his grant under which he claims no interest or title cannot be put in evidence to disprove claimant's right to enter the land in question. Lumber Co. v. Clarke, 152 N. C. 544, 67 S. E. 1057 (1910).

Title by Adverse Possession.—It is not necessary that the protestant claim title by grant, he may claim title by adverse possession. When a claim of adverse possession is interposed the burden of proof shifts to the protestant. Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

Floating Entry Not Notice.—An entry that is so vague that the land entry cannot be identified is a floating entry and is not sufficient notice for filing protest as provided by this section. Cain v. Downing, 161 N. C. 592, 77 S. E. 764 (1913).

Applied in Walker v. Parker, 169 N. C. 150, 85 S. E. 306 (1915).

§ **146-27. Payment of price; lapse of entry.**—All entries of land shall, in every event, be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event they shall be paid for within twelve months after final judgment on the protest; and all entries of land not thus paid for shall become null and void, and may be entered by any other person. (1854-5, c. 49; R. C., c. 42, s. 8; Code, s. 2766; Rev., s. 1731; C. S., s. 7558.)

Editor's Note. — As to construction of section, see Barker v. Donton, 150 N. C. 723, 64 S. E. 774 (1909). As to section not being applicable to Cherokee lands, see Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583 (1893); Frasier v. Gibson, 140 N. C. 272, 52 S. E. 1035 (1905).

§ **146-28. When entry lapses, subsequent entry valid.**—Whenever an entry of land shall be made in any entry-taker's office, and the enterer shall fail to have the land surveyed and pay the price for the same within the time limited by law, any person who may have made a subsequent entry for the same land may have the same surveyed and pay the price and have a grant. (1809, c. 771, P. R.; R. C., c. 42, s. 9; Code, s. 2767; Rev., s. 1710; C. S., s. 7559.)

In General.—"Where an enterer allows his entry to lapse, before taking out his grant the entry becomes null, and any grant founded upon it is also void on its face, and, even without a direct proceeding to impeach it, will be treated by the courts as inoperative and insufficient to divest title out of the State, because it is apparent on inspection that it was issued without authority of law, when the efficacy of the entry was gone by the efflux of time, and, after the right of another, who had shown more diligence, accrued. Bryson v. Dodson, 38 N. C. 138 (1843); Horton v. Cook, 54 N. C. 270 (1854); Stanly v. Biddle, 57 N. C. 383 (1859); Wilson v. Land Co., 77 N. C. 457 (1877)." Gilchrist v. Middleton, 107 N. C. 633, 12 S. E. 85 (1890).

By failure to have a grant issued on an entry in the required time, the entry will lapse and a junior entry will give good title. Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583 (1893).

When Senior Enterer Trustee for Junior Enterer.—Under an entry where the purchase money has been paid to the State in due time the enterer has a right to call on the State for a grant even 46 years after the entry. But if there has been a subsequent entry by an innocent person without notice the senior enterer will hold as trustee for the junior enterer with senior grant. Gilchrist v. Middleton, 108 N. C. 705, 13 S. E. 227 (1891).

§ **146-29. Lapsed entries not renewed within one year.**—No lands entered on the books of the entry-taker, the entry of which shall be suffered to lapse by nonpayment of the price thereof, shall be re-entered within one year after the time at which such entry shall lapse, by the person in whose name such entry was made, but such re-entry shall be void. (R. C., c. 42, s. 10; Code, s. 2768; Rev., s. 1712; C. S., s. 7560.)

§ **146-30. Entry for benefit of entry-taker.**—If any entry-taker shall desire to make an entry in his own name, the same shall be made in its proper place, before a justice of the peace of the county, not being a surveyor or assistant; which entry the justice shall return to the next meeting of the board of county commissioners, who shall insert it; and every entry made by or for such entry-taker, in any other manner, shall be void. (1777, c. 114, s. 17, P. R.; R. C., c. 42, s. 16; Code, s. 2773; Rev., s. 1711; C. S., s. 7561.)

Section Must Be Followed. — This section was passed to prohibit improper practice and therefore must be followed. An entry by an entry-taker in any other manner is void. Terrell v. Manney, 6 N. C. 375 (1818).

ARTICLE 4.

Surveys.

§ **146-31. Warrant for survey issued.**—If no protest be filed, or where the protest is filed and the right of the claimant to make the entry is sustained, the entry-taker shall deliver to the party a copy of the entry with its proper number and a warrant to the surveyor to survey the same, which warrant shall contain a copy of the entry with its number and date, and a certificate that notice has been given as above provided, and that no protest has been filed, or that protest has been filed and that the court has decided in favor of the claimant. Each warrant shall be delivered to the surveyor in the order of time in which the entry was made. (Code, s. 2765; 1903, c. 272, s. 3; Rev., s. 1713; C. S., s. 7562.)

§ **146-32. Duplicate warrants.**—When any person duly makes an entry of lands which has not become void by lapse of time, and upon which the entry-taker has issued his warrant of survey, and the same be lost by accident, the entry-taker, on due proof being made to his satisfaction, by affidavit of the claimant or the surveyor or deputy surveyor, may issue a duplicate warrant of survey, of the same tenor and date, taking care to set forth, on the face of such warrant, that the same is a duplicate; in which case such warrant shall be made as valid as the original. (1814, c. 878, s. 1, P. R.; R. C., c. 42, s. 14; Code, s. 2771; Rev., s. 1714; C. S., s. 7563.)

§ **146-33. Surveys according to priority of entry.**—The surveyor shall survey all entries of land according to the priority of entry, paying due respect to the number of each warrant; and every grant obtained by any subsequent entry otherwise than is by this chapter directed, shall be void: Provided, nothing herein shall be construed to prevent any person who shall make a subsequent entry from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer of such land has surveyed his entry as aforesaid. (1787, c. 279, P. R.; R. C., c. 42, s. 13; Code, s. 2770; Rev., s. 1715; C. S., s. 7564.)

Time of Junior Entry.—It is not necessary that the prior entry lapse before the junior entry is made, for the junior entry is only good as to what remains after the survey of the prior entry, or by lapse of the prior entry. Stanly v. Biddle, 57 N. C. 383 (1859).

A survey by a deputy not duly sworn is not sufficient to give enterer good title under the survey. Avery v. Walker, 8 N. C. 140 (1820).

§ **146-34. Chainbearers sworn.**—No survey for the purpose of obtaining a grant shall be made until the chainbearers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor. The chainbearers shall actually measure the land surveyed. The surveyor is empowered to administer the oath. (1777, c. 114, s. 10, P. R.; R. C., c. 42, s. 12; Code, s. 2769; Rev., s. 1717; C. S., s. 7565.)

It is necessary that the chainbearer be sworn before a bill for relief and conveyance of legal title will lie against one claiming under a junior entry and grant. Avery v. Walker, 8 N. C. 140 (1820).

Method of Measuring Not Prescribed.—This and the following sections do not prescribe the method to be used in measuring the lines in surveying an entry. Cody v. England, 221 N. C. 40, 19 S. E. (2d) 10 (1942).

§ **146-35. Survey made and plots prepared.**—Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, within ninety days, lay off and survey the same agreeably to this chapter; and make thereof two fair plots, the scale whereof and the number of the entry shall be mentioned on such plots; and shall set down in words the beginning, angles, distances, marks, and watercourses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner that the water shall form one side of the survey, and the land be laid off back from the water. (1777, c. 114, s. 10, P. R.; R. C., c. 42, s. 12; Code, s. 2769; 1903, c. 272, s. 4; Rev., s. 1716; C. S., s. 7566.)

The plots are evidence of the survey and in case of a mistake of the draughtsman in drawing the deed they are admissible to show the land actually surveyed, and intended to be included in the grant and deed. Higdon v. Rice, 119 N. C. 623, 26 S. E. 256 (1896).

A plat may be introduced to show that the grant does not include the land surveyed. Dugger v. McKesson, 100 N. C. 1, 6 S. E. 746 (1888).

The original plat is made a part of the grant for the purpose of indicating the shape and location of the boundary, and is, of course, evidence, though not conclusive, to be submitted to the jury as to the true shape and location of the land. Redmond v. Mullenax, 113 N. C. 505, 18 S. E. 708 (1893).

Certified Copy as Evidence. — See note to § 146-36.

Line on Navigable Waters.—A grant of riparian property running with a navigable stream will be construed to grant only to the low water mark. This rule applies to municipal corporations as well as to individuals. State v. Eason, 114 N. C. 787, 19 S. E. 88 (1894).

§ **146-36. Plots and warrants sent to Secretary of State.**—The surveyor shall, within one year, transmit the plots, together with the warrant or order of survey, to the office of the Secretary of State, or deliver them to the claimant. The Secretary of State shall, on receipt of the plots, file one in his office, and attach the other to the grant. (1777, c. 114, P. R.; R. C., c. 42, s. 12; Code, s. 2769; Rev., ss. 1718, 1734; C. S., s. 7567.)

Plots as Evidence.—As the county surveyor is required to send two plots to the Secretary of State, a certified copy can be used in evidence to show the shape of the land surveyed. Such evidence is not conclusive. Higdon v. Rice, 119 N. C. 623, 26 S. E. 256 (1896).

§ **146-37. Special surveyor appointed, if no county surveyor.**—When the office of county surveyor is vacant, the county commissioners may appoint a special surveyor to survey any lands that may be entered; and the plots and certificates of such special surveyor, accompanied by a copy of the order of the county commissioners appointing him, shall be held valid, as if done by a county surveyor duly elected. (1777, c. 114, s. 10, P. R.; R. C., c. 42, s. 12; Code, s. 2769; Rev., s. 1719; C. S., s. 7568.)

§ **146-38. Special surveyor, when county surveyor interested.**—When a county surveyor wishes to have lands surveyed in a county where he acts as principal surveyor, for the purpose of obtaining a grant, the board of county commissioners of the county shall appoint some person to make the survey, and the entry-taker shall direct his warrant of survey to such person; and all certificates, surveys, and plots of the same shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases. (1828, c. 23; R. C., c. 42, s. 17; Code, s. 2774; Rev., s. 1721; C. S., s. 7569.)

A deputy surveyor cannot be appointed by a county surveyor, and if properly appointed a deputy cannot survey his own land. Avery v. Walker, 8 N. C. 140 (1820).

§ **146-39. Record of surveys to be kept.**—The county commissioners of the several counties of the State shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. And such record shall have an alphabetical and numerical index, the numerical index to run consecutively. And it shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the day such survey was made. (1905, c. 242; Rev., s. 1722; C. S., s. 7570.)

Vague Record Not Good against Junior Enterer.—Prior to this section an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who has perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer which he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite than the original entry, did not remedy the defective description of the entry. This section provides for notice of all surveys and such will not hereafter arise. Lovin v. Carver, 150 N. C. 710, 64 S. E. 775 (1911).

§ **146-40. Former surveys recorded.**—Where any ex-county surveyor is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in such Record of Surveys, and the county commissioners shall pay for such services ten cents for each survey so recorded and indexed. (1905, c. 242, s. 2; Rev., s. 1725; C. S., s. 7571.)

§ **146-41. What record must show; received as evidence.**—All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee, and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry, and the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided, that if such record differs from the original certificates of survey heretofore made or on file in the office of the Secretary of State, such original or certified copy of the certificate in the Secretary of State's office shall control. (1905, c. 242, ss. 2, 3, 6; Rev., s. 1723; C. S., s. 7572.)

§ **146-42. Fees for recording.**—For recording and indexing such surveys the surveyor may charge twenty-five cents, which shall be paid by the party for whom the survey is made; and any surveyor shall not be required to make any survey until his fees provided by law are paid, including the twenty-five cents for recording and indexing. (1905, c. 242, s. 4; Rev., s. 1724; C. S., s. 7573.)

§ **146-43. Penalty for failure to make record.**—Any county surveyor or deputy surveyor failing to make such record of any survey within sixty days after he makes a survey shall forfeit and pay to any party who may sue for the same two hundred dollars, and be subject to be removed from office by the board of county commissioners, and if any surveyor is removed the county commissioners shall appoint his successor, and all papers and records of a public nature in the possession of such surveyor so removed, or who may die, shall be turned over to his successor in office. (1905, c. 242, s. 5; Rev., s. 1726; 1907, c. 579, s. 1; C. S., s. 7574.)

ARTICLE 5.

Grants.

§ **146-44. Price to be paid for land.**—Whenever an entry and survey of any vacant and unappropriated land belonging to the State shall be filed in the office of the Secretary of State, he shall immediately investigate the character of the land and determine its market value from its character and location, and thereupon fix the price per acre for said lands. Said price so fixed by the Secretary of State shall be paid by the enterer to the Treasurer of the State before any grant of the same is made by the Secretary of State. (Rev., s. 1733; 1909, c. 447; C. S., s. 7575; 1927, c. 8; 1927, c. 83, s. 3; 1929, cc. 78, 210; 1931, c. 119.)

Local Modification. — Avery: 1939, c. 125; Cherokee, Clay, Graham and Macon: 1933, c. 72; Moore: 1939, c. 125; Swain: 1933, c. 72.

Prior Grants Not Affected by Subsequent Grant.—If a person lay an entry upon and procure a grant for land covered by a grant, he acquires no title thereto, as the State by the senior grant parted with its title. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

All vacant and unappropriated lands belonging to the State, with certain well defined exceptions, are subject to entry and grant, and when there are successive grants of the same land, the prior grant prevails. Perry v. Morgan, 219 N. C. 377, 14 S. E. (2d) 46 (1941).

§ **146-45. Price paid State Treasurer.** — The State Treasurer shall receive the money for vacant and unappropriated lands upon the presentation to him of the certificate of the Secretary of State, setting forth the number and date of the entry, and the quantity of acres found by the surveyor to be vacant, as the same may appear by the returns made to him from the surveyor or entry-taker, or from the entry-taker's warrant, or the plots of survey. (1827, c. 23; 1829, c. 30; R. C., c. 42, s. 20; Code, s. 2777; Rev., s. 1732; C. S., s. 7576.)

Payment into the State treasury without the certificate of the Secretary of State is a voluntary unauthorized act and does not entitle the party to a grant, under his entry. Buchannan v. Fitzgerald, 41 N. C. 121 (1848).

§ **146-46. Grant issued on Auditor's certificate.**—No grant shall issue on the Treasurer's receipt for the money; but the Auditor shall make out and deliver to the Secretary of State a certificate, conformable to each receipt by him countersigned, on which the Secretary shall issue the grant. (1799, c. 525, s. 4, P. R.; R. C., c. 42, s. 21; Code, s. 2778; Rev., s. 1728; C. S., s. 7577.)

§ **146-47. Manner of issuing grant.**—The Secretary of State, on application of claimants, shall make out grants for all surveys returned to his office, which grants shall be authenticated by the Governor, countersigned by the Secretary, and recorded in his office. The date of the entry, and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every grant, and a copy of the plot shall be attached to the grant; and no grant shall issue upon any survey unless the same be signed by the surveyor of the county. Upon certificate from the entry-taker that the claimant has assigned his interest under the entry, a grant shall be issued in the name of the assignee: Provided, that the assignee is a citizen and resident of this State, or has come into the State with the bona fide intent of becoming a resident and citizen thereof. (1777, c. 114, s. 10, P. R.; 1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. C., c. 42, ss. 12, 22; Code, ss. 2769, 2779; 1889, c. 522; Rev., ss. 1729, 1734, 1735; C. S., s. 7578.)

Grants under State Seal.—A grant without the Great Seal of the state affixed does not show title under that grant, as it is mandatory that the Seal be affixed to authenticate the signature of the Governor and Secretary of State. Howell v. Hurley, 170 N. C. 798, 83 S. E. 699 (1914).

A paper signed by the Governor and countersigned by the Secretary of State, although not bearing the Great Seal of the State, is admissible in evidence to show title. Howell v. Hurley, 170 N. C. 401, 87 S. E. 107 (1915).

Secretary of State Must Sign.—A grant of land if not signed by the Secretary of State is void. Hunter v. Williams, 8 N. C. 221 (1820).

Deputy Signing. — It is necessary that the Secretary of State sign the grant, and if he signs it it is valid no matter if there has been an attempt to sign by one of the deputies. Fowler v. Development Co., 158 N. C. 48, 73 S. E. 488 (1911). As to validation of grants signed by a deputy, see § 146-62.

Place of Signature Immaterial. — It is not necessary that the Secretary of State countersign at any especial place on the grant to make it valid. Richards v. Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911).

Secretary of State Must Issue.—Where the claimant has complied with the law, and it appears from the warrant and survey that the entry-taker and surveyor have discharged their duties, the Secretary must issue the grant, and has no discretion in the matter. Wool v. Saunders, 108 N. C. 729, 13 S. E. 294 (1891). But see § 146-50, providing when the Secretary of State may or shall withhold a grant.

§ **146-48. Registration of grants.**—Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the Secretary of State, which shall have the same effect as if the original had been registered. (1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. S., c. 42, s. 24; R. C., c. 42, s. 22; Code, s. 2779; Rev., s. 1729; C. S., s. 7579.)

Grant Not Void for Failure to Register It.—A grant is not void because of failure to record it. A junior grant that is recorded is not valid until there has been seven years' adverse possession. North Carolina Mining Co. v. Westfeldt, 151 F. 290 (1907).

Sufficient Evidence for Registration. — The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the Great Seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. Ray v. Stewart, 105 N. C. 472, 11 S. E. 182 (1890); Barcello v. Hapgood, 118 N. C. 712, 24 S. E. 124 (1896); Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899).

Extension of Time for Registration. — "Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the legislature uniformly extended the time for registration for two years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation." Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

Cited in United States v. 7,405.3 Acres of Land, 97 F. (2d) 417 (1938).

§ **146-49. Grant issued in case of claimant's death.**—In case of the death of any person having made an entry of lands, pending the same or before making out the grant, the Secretary shall issue the grant in the name of the decedent; and those interested, as heirs at law, devisees, tenants in dower, by the curtesy, or otherwise, shall have the same estate as if the land had been granted during the life of the decedent. (1715, c. 44, s. 6, P. R.; 1798, c. 439, s. 6, P. R.; R. C., c. 42, s. 23; Code, s. 2780; Rev., s. 1730; C. S., s. 7580.)

§ **146-50. When Secretary of State may withhold grant.**—When application is made for a grant, if the Secretary of State has reason to believe that the land covered by any entry and the surveys made in pursuance of the same is the property of the State Board of Education, he may, in his discretion, withhold the issuance of a grant for same until the engineer of the State Board of Education or surveyor appointed by the Board shall have examined into the matter and made his report. And if the engineer or surveyor shall report that the lands in question are the property of the State Board of Education and not subject to entry, the Secretary of State shall not issue a grant on such entry and surveys. If the Secretary of State has reason to believe that the land for which a grant is sought has already been granted and does not belong to the State, he shall not issue grant for the same until it appears to his satisfaction that the land does belong to the State and is subject to entry.

The Secretary of State shall withhold a grant to any and all vacant and unappropriated lands lying within or immediately adjacent to the boundaries of any and all national forest purchase areas; also to lands within or near State forests and parks, and such other areas as the Department of Conservation and Development may request to be withheld for dedication to public use as State forests, State parks, game refuges or other recreational areas. The Secretary of State is further authorized to furnish to the Department of Conservation and Development all available information on such tracts or parcels of vacant land. The Department of Conservation and Development, after proper investigation, may then request the permanent dedication of these lands to the State as State forests and parks, game and wildlife refuges or other type of economic or recreational areas. If the Department of Conservation and Development should decide that the lands in question are too small or in other ways unsuitable for administration as such State forests and parks but are more suitable for the consolidation of publicly owned forests, parks, game refuges or other recreational areas, it may upon approval by the Governor request the Secretary of State and the said Secretary is hereby directed, payment of the usual official and service fees therefor to be made in such manner as the said Secretary may direct, to issue a grant for said land to such agency as may have the direction and supervision over such publicly owned forests, parks, game refuges or other recreational areas, or it may enter into agreement with federal or other public and private agencies for exchange of lands in order to bring about the consolidation of publicly owned forests, parks, game refuges or other recreational areas; and on approval of such agreements for exchange by the Governor, the Secretary of State, on request of the Department of Conservation and Development, shall issue grants in accordance with such agreements. (1903, c. 272, s. 3; Rev., s. 1727; C. S., s. 7581; 1935, c. 173.)

Editor's Note. — The second paragraph was added by the 1935 amendment.

§ **146-51. Cutting timber on land before obtaining a grant.**—If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C. S., s. 7582.)

§ **146-52:** Transferred to § 104-25.

§ **146-53. Card index system for grants.**—The Secretary of State shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

.... County. .... Acres
Name ....
Grant No. .... Issued ....
Grant Book .... Page ....
Entry No. .... Entered ....
File No. ....
Location ....
Remarks: ....

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the Secretary of State shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S., s. 7584.)

§ **146-54. Grant of Moore's Creek Battlefield authorized.** — In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684, U. S. Code, Title 16, ss. 422-422(d)), the Governor of the State of North Carolina is hereby authorized to execute to the United States Government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States Government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided, that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56.)

Editor's Note. — The 1927 amendment struck out the words "and that the State of North Carolina also reserves authority to prevent all violation of its criminal laws committed on said tract of land so ceded" which immediately preceded the last proviso.

ARTICLE 6.

Correction of Grants.

§ **146-55. Change of county line before grant issued or registered.** —All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor, or the registration of the grants, by the change of former county lines, or the establishment of new lines, the lands so entered were placed in a county, or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grant shall have the same force and effect as if they had been registered in the county where the lands were situated; and all persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the Secretary of State, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (1897, c. 37; Rev., s. 1736; C. S., s. 7585.)

When the entry and survey are made in one county, the registering of the deed in that county gives good title although a new county may have been organized including the land granted before the grant was registered. McMillan v. Gombill, 106 N. C. 359, 11 S. E. 273 (1890); Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899).

§ **146-56. Entries in wrong county.**—Whereas many citizens of the State, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (1805, c. 675, P. R.; 1834, c. 17; R. C., c. 42, s. 27; Code, s. 2784; Rev., s. 1737; C. S., s. 7586.)

Applied and discussed in Harris v. Norman, 96 N. C. 59, 2 S. E. 72 (1887). See Avery v. Strother, 1 N. C. 558 (1802); Lunsford v. Bostion, 16 N. C. 483 (1830).

§ **146-57. Errors in surveys of plots corrected.**—Whenever there may be an error by the surveyor in plotting or making out the certificate for the secretary's office, or the secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto; and the court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the Secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided, no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (1790, c. 326, P. R.; 1798, c. 504, P. R.; 1804, c. 655, P. R.; 1814, c. 876, P. R.; R. C., c. 42, s. 28; Code, s. 2785; Rev., s. 1738; C. S., s. 7587.)

§ **146-58. Resurvey of lands to correct grants.** — Persons who have heretofore entered or may hereafter enter vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors, but in every case where the purchase money has been paid into the State treasury within the time prescribed by law after entry and survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the entry-taker of the county where the land lies, and have his entry surveyed as is directed by existing laws, and on presenting a certificate of survey and two fair plots thereof to the Secretary of State within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the Secretary of State to issue to him, the proper grant for the lands so entered. (1901, c. 734; Rev., s. 1739; C. S., s. 7588.)

§ **146-59. Lost seal replaced.**—In all cases where the seal annexed to a grant is lost or destroyed the Governor may, on the certificate of the Secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto. (1807, c. 727, P. R.; R. C., c. 42, s. 24; Code, s. 2781; Rev., s. 1740; C. S., s. 7589.)

§ **146-60. Errors in grants corrected.**—If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the Secretary of State has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the Secretary of State shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, he shall make the former correspond with the latter as the true facts may require. In case the party interested prefer it, the Secretary of State shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the State as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (1889, c. 460; Rev., s. 1741; C. S., s. 7590.)

Power to Correct Errors Not Judicial.—The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions, or correcting the names of grantees, material words or figures, etc., confers on him only a ministerial authority and not a judicial power. Herbert v. Union Development Co., 179 N. C. 662, 103 S. E. 380 (1920).

§ **146-61. Irregular entries validated.**—Wherever persons have prior to January first, one thousand eight hundred and eighty-three, irregularly entered lands and have paid the fees required by law to the Secretary of State, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (1868-9, c. 100, s. 4; 1868-9, c. 173, s. 6; 1874-5, c. 48; Code, s. 2761; Rev., s. 1743; C. S., s. 7591.)

Section Cures Irregularities.—Irregularities in receiving grants from the State are cured by this section. Wyman v. Taylor, 124 N. C. 426, 32 S. E. 740 (1899).

§ **146-62. Grant signed by deputy Secretary of State validated.**—Where State grants have heretofore been issued and the name of the Secretary of State has been affixed thereto by his deputy or chief clerk, or by anyone purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (1905, c. 512; Rev., s. 1744; C. S., s. 7592.)

This section does not interfere with vested rights, and therefore a grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as between the State and the grantee, if there was no prior grant. Richard v. Ritter Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911).

§ **146-63. Time for registering grants extended.**—All grants from the State of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from the first day of January, nineteen hundred and eighteen, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North

Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1893, c. 40; 1901, c. 175; 1905, c. 6; Rev., s. 1747; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, cc. 27, 45; 1915, c. 170; 1917, c. 84; C. S., s. 7593; Ex. Sess. 1920, c. 78; 1921, c. 153.)

Editor's Note. — The 1920 amendment extended the time for registration two years, and the 1921 amendment extended this time two years more.

Registration against Junior Grant. — Where neither party has possession the senior grant is valid against a junior grant duly recorded no matter how long registration may have been delayed by senior grantee. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

It is not necessary that a grant from the State be registered to make it valid. The retroactive statutes making grants registered after the time prescribed valid, gives good title against a junior grant duly recorded. Dew v. Pyke, 145 N. C. 300, 59 S. E. 76 (1907).

§ **146-64. Time for registering grants and other instruments extended.**—The time is hereby extended until September first, one thousand nine hundred and twenty-six, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided, that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and provided further, that this section shall not affect pending litigation: Provided further, that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20.)

Effect on § 47-26.—Where a mother has made a deed of gift of her lands to her son, who has failed to have it registered in the time required by § 47-26, and it is for that reason void, a later curative statute extending the time for registration cannot revive the void deed to the son. Under the facts, vested rights thereunder have been acquired. Booth v. Hairston, 193 N. C. 278, 136 S. E. 879, 57 A. L. R. 1186 (1927); (rehearing) 195 N. C. 8, 141 S. E. 480 (1928).

§ **146-65. Time for registering grants further extended.**—The time for the registration of grants issued by the State of North Carolina is hereby extended for a period of two years from January first, nineteen hundred and twenty-five: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97.)

§ **146-66. Time for registering grants or copies extended.**—The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from the first day of January, nineteen hundred twenty-seven, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140.)

§ **146-66.1. Further extension of time for registering grants or copies.**—The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1st, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99.)

ARTICLE 7.

Grants Vacated.

§ **146-67. Civil action to vacate grant.**—When any person claiming title to lands under a grant or patent from the King of Great Britain, any of the lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since the fourth day of July, one thousand seven hundred and seventy-six, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (R. C., c. 42, s. 29; Code, s. 2786; Rev., s. 1748; C. S., s. 7594.)

Collateral Attack on Grant. — If the land be not subject to entry, the grant is void and may be attacked collaterally. Janney v. Blackwell, 138 N. C. 437, 50 S. E. 857 (1905).

Plaintiff Must Claim an Interest in Land.—An action cannot be had under this section unless it is made to appear that the plaintiff has an interest in the land claimed by the defendant. Jones v. Riggs, 104 N. C. 281, 70 S. E. 465 (1889); Wadsworth v. Cozard, 175 N. C. 15, 94 S. E. 670 (1917).

Where the State has no interest in the land an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. State v. Bland, 123 N. C. 739, 31 S. E. 475 (1898).

Fraud Practiced on the State. — A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the State. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955 (1902).

Action Where Land in Several Counties.—When it appears in an action for the cancellation of several grants brought under the provisions of this section, some of which lay in a different county from that wherein the action was brought, that the allegation of fraud and false suggestion involve one and the same transaction, affecting each and all the grants, the subject of the litigation, it is unnecessary to bring a separate action in respect to the grants issued in the other county, some of the lands, the subject of the action lying in the county wherein the action was brought. Hardwood v. Waldo, 161 N. C. 196, 76 S. E. 680 (1912).

Only Means of Attacking Grants. — It is well settled that a grant can only be vacated by proceedings under the statute (§§ 146-67 to 146-69). Crow v. Holland, 15 N. C. 417 (1834); McNamee v. Alexander, 109 N. C. 242, 13 S. E. 777 (1891); Kimsey v. Munday, 112 N. C. 816, 17 S. E. 583 (1893).

§ **146-68. Judgment recorded in Secretary of State's office.**—If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, they may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the Secretary of State's office, where it shall be recorded in a book kept for that purpose; and the Secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (R. C., c. 42, s. 30; Code, s. 2787; Rev., s. 1749; C. S., s. 7595.)

§ **146-69. Action by State to vacate grants.**—An action may be brought by the Attorney General, in the name of the State, for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

1. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or
2. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or
3. When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (C. C. P., s. 367; Code, s. 2788; Rev., s. 1750; C. S., s. 7596.)

State Must Be a Party Interested. — The State can only bring action under this section to vacate a grant, when title would vest in the State upon cancellation of the grant. State v. Bland, 123 N. C. 739, 31 S. E. 475 (1898).

Attorney General Must Bring Action.— The right to bring action to set aside a grant because of fraud practiced on the State must be brought by the Attorney General in the name of the State, and cannot be brought by any other person. Henry v. McCoy, 131 N. C. 586, 42 S. E. 955 (1902); Jones v. Riggs, 154 N. C. 281, 70 S. E. 465 (1911).

Grounds for Vacating. — Where a grant has been in strict compliance with the law, rights of property have been acquired which cannot be taken away, even by the State, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. State v. Spencer, 114 N. C. 770, 19 S. E. 93 (1894).

Applicable Only to Land Grants.—A license to sell liquor is not a letter patent to be vacated by quo warranto under this section. Hargett v. Bell, 134 N. C. 394, 46 S. E. 959 (1904).

Proceeding by the Attorney General to vacate a charter of a corporation cannot be brought under this section, or because of any authority vested by this section, but must be brought under § 55-126. Attorney General v. Holly Shelter R. Co., 134 N. C. 481, 46 S. E. 959 (1904).

ARTICLE 8.

Phosphate Beds.

§ **146-70. Phosphate beds in navigable waters entered.**—Any resident of this State who shall make affidavit before the clerk of the superior court of any county through which such navigable stream may flow, that he has discovered in any navigable stream or waters of this State any phosphate rock or phosphate deposit therein shall have authority and power to enter under the entry laws of this State so much of the bed of any such navigable stream or waters as shall not exceed in any one entry two miles in length up the middle of any such stream or water for the purpose of digging, mining, or removing any such deposit or rock. (1891, c. 476; Rev., s. 1751; C. S., s. 7597.)

§ **146-71. Grant obtained; term; royalty.**—Upon such affidavit being filed with the entry-taker, and upon a survey and plot being made of such entry by the county surveyor as is now required by law in cases of entry of land, being made and certified to the Secretary of State with a copy of such affidavit and entry so made, the Secretary of State shall issue a patent or grant to such person, his heirs or assigns, for a term of twenty-five years for the land, with the proviso and condition inserted therein that the grantee therein shall pay to the Treasurer of the State at the end of every three months a royalty of one dollar per ton for every ton of the crude phosphate rock or deposit mined, dug, or removed. (1891, c. 476, s. 2; Rev., s. 1752; C. S., s. 7598.)

§ **146-72. Exclusive right to mine; bond for royalty.** — Such grantee, his heirs or assigns, shall have the exclusive right to mine, dig, or remove any such phosphate rock or deposit for the term of twenty-five years from the date of the patent upon paying the royalty of one dollar specified in the patent: Provided, however, that as a condition precedent to the granting of any such patent each company or person making any such entry shall enter into bond with sufficient surety in the penal sum of five thousand dollars, conditioned for the making of faithful and true returns to the Treasurer of the State of the number of tons of phosphate rock and phosphate deposit so dug, mined, or removed, at the end of every month, and the punctual payment to the Treasurer of the royalty of one dollar per ton upon every ton of the crude rock, without being steamed or dried, at the end of every three months, and the bond and sureties shall be subject to the approval now required by law for the bonds of State officers. (1891, c. 476, s. 3; Rev., s. 1753; C. S., s. 7599.)

§ **146-73. Navigation not obstructed by grantee.**—No grant issued under the provisions of this article shall confer upon the person receiving the same the right to obstruct the navigation of any such stream or water, nor confer upon such person or his assigns any other right than that granted to take, mine, or dig phosphate rock or deposit therefrom. (1891, c. 476, s. 4; Rev., s. 1754; C. S., s. 7600.)

§ **146-74. Fees for issuing grant for phosphate beds.**—No fee or cost shall be charged or collected by the Secretary of State of any person or corporation receiving any patent or grant under this article, except the fee allowed by law to the Secretary of State for issuing a patent under the entry laws of the State. (1891, c. 476, s. 5; Rev., s. 1755; C. S., s. 7601.)

§ **146-75. Failure to operate for two years vacates grant.**—Any person or corporation who shall fail to dig, mine or remove phosphate rock or deposit from any such stream or water to which he or it may be entitled under any patent or grant issued under the provisions of this article for the period of two years from the date of the patent, or after beginning digging, mining, or removing the same, shall fail to continue to so dig, mine, or remove the same for the period of two years, shall forfeit all rights therein granted, and the territory shall immediately thereupon become subject to entry under the provisions of this article without making the affidavit of the discovery of any such deposits or rocks. (1891, c. 476, s. 6; Rev., s. 1756; C. S., s. 7602.)

§ **146-76. Mining phosphate without grant.**—Any person or corporation resident of this State shall have the right to mine, dig, or remove phosphate rock or deposits from any of the navigable streams or waters in this State to which no exclusive patent or grant may have been issued, upon such person or corporation first entering into bond in the penal sum of five thousand dollars, payable to the Treasurer of the State, for the payment of the same royalty, in the same manner and under the same regulations as are prescribed in this article for persons operating under a grant; but nothing in this section shall be construed to give to any such person or corporation any exclusive franchise or privilege to dig, mine, or remove any such phosphate rock or deposit from any stream or water of this State. (1891, c. 476, s. 7; Rev., s. 1757; C. S., s. 7603.)

§ **146-77. Mining phosphate rock in rivers.** — If any person shall dig, mine, or remove any phosphate rock or deposit from any of the navigable waters of this State, except for the purpose of prospecting and discovering as allowed by law, he shall be guilty of a misdemeanor, and shall also forfeit and pay ten dollars per ton for every ton of phosphate rock or deposit so mined, dug, or removed, one-half to the use of the State and the other one-half to go to the informer. (1891, c. 476, s. 8; Rev., s. 3744; C. S., s. 7604.)

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Article 9.

Swamp Lands Reclaimed.

§ **146-78. Power in State Board of Education.**—The State Board of Education is invested with full power to adopt all necessary ways and means for causing so much of the swamp lands to be surveyed as it may deem capable of being reclaimed, and shall cause to be constructed such canals, ditches, roads, and other necessary works of improvement as it may deem proper and necessary. (R. S., c. 67, s. 5; R. C., c. 66, s. 5; Code, s. 2508; 1885, c. 70, ss. 1, 2, 4; 1899, c. 253, s. 5; Rev., s. 4036; C. S., s. 7605.)

§ **146-79. Expenditures limited.** — The State Board of Education shall not lend or expend any part of the public moneys, stocks, funds, or property vested in it by law, or under its control, for the purpose of reclaiming lands, or for any other purpose whatsoever, except by the direction of the General Assembly. (R. C., c. 66, s. 12; 1870-1, c. 279; Code, ss. 2515, 2530; Rev., s. 4037; C. S., s. 7606.)

§ **146-80. Purchase and exchange of land.**—Whenever, in the process of draining, it may be necessary, in order to prevent a sacrifice of the interests of the State, to purchase small tracts owned by individuals, the corporation may buy them, or exchange for them some other portions of the swamp lands; and the lands thus acquired by the corporation shall be held by it as other swamp lands. (R. C., c. 66, s. 14; Code, s. 2517; Rev., s. 4038; C. S., s. 7607.)

Editor's Note.—The word "corporation" as used in this and certain other sections of this subchapter would seem to refer to the State Board of Education. By § 5394 of Volume 3 of the Consolidated Statutes the members of the Board were created a corporation. The said section was brought forward in the Legislative Edition of the North Carolina Code of 1943 as § 115-16 but appears as repealed in the General Statutes.

§ **146-81. Title vested in Board by written consent.**—Whenever it is necessary to construct any such works on the lands of any individual proprietor, his written consent, without any formal deed of conveyance of the lands necessary to the work and its future enjoyment, shall vest the title thereof in the corporation forever; and when any infant or person non compos mentis is owner thereof, his guardian is authorized to give such consent; and a feme covert and her husband may do so without any private examination; and the consent so given shall be valid for all purposes. (R. S., c. 67, s. 6; R. C., c. 66, s. 6; Code, s. 2509; Rev., s. 4039; C. S., s. 7608.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

§ **146-82. Condemnation of lands.**—Whenever the consent of the proprietor shall be withheld, the corporation's agents may enter on the lands and lay off so much as may be necessary to be used in such work, the value of which shall be assessed to the proprietor according to law; and, upon the payment thereof, the title shall be vested in the corporation forever. In the assessment of valuation, the benefit that will accrue to the proprietor by reason of the improvement may be likewise reckoned and set off against the damages. The proceedings for such condemnation shall be the same as are provided for condemnation of lands by railroad corporations. And the corporation's officers and agents shall have a right to enter upon the lands of all persons whomsoever, for the purpose of surveying. (R. S., c. 67, s. 7; R. C., c. 66, s. 7; Code, ss. 2510, 2513; Rev., s. 4040; C. S., s. 7609.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

§ **146-83. Private lands assessed for benefits.**—When there are lands owned by individuals which can be reclaimed by reason of the canals, ditches, or other works of the corporation, the same shall be assessed to contribute an equitable proportion of the cost of such works; which assessment shall be made by the Board or a board of commissioners appointed by them, and the same shall be charged on the lands; but the corporation, by contract with individual proprietors, may agree upon the assessment, and accept payment thereof in labor or money. (R. S., c. 67, s. 8; R. C., c. 66, s. 8; Code, s. 2511; Rev., s. 4041; C. S., s. 7610.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

§ **146-84. Regulations for surveying, reclaiming, and assessing.** — The State Board of Education may enact all necessary rules and regulations for surveying and reclaiming the swamp lands; for assessing the lands of individuals which may be improved by the works, and for collecting assessments; and the assessments shall be published weekly for five weeks in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the superior court of the county wherein the lands assessed are situate. If no objections are filed at the court next after such advertisement, the assessments shall be confirmed by the court and the lands adjudged liable for the amount, and execution may be issued for the sale thereof to satisfy the same, on motion to the court for that purpose; and if any reasons be shown against the assessments, they shall be heard and determined by the court, and the assessments shall be increased or diminished, as the court shall adjudge. (R. S., c. 67, s. 9; R. C., c. 66, s. 9; Code, s. 2512; 1899, c. 253; 1901, c. 529; Rev., s. 4042; C. S., s. 7611.)

§ **146-85. Engineer, surveyor, and other servants employed.**—The State Board of Education may appoint an engineer and surveyor and other servants to plan the works directed by this subchapter, and such Board may annually appoint an agent to superintend and supervise all the swamp lands belonging to the State Board of Education. (R. S., c. 67, s. 9; 1854, c. 48; R. C., c. 66, ss. 9, 20; Code, ss. 2512, 2523; 1899, s. 253, ss. 1, 2, 5; 1901, c. 529; Rev., s. 4043; C. S., s. 7612.)

§ **146-86. Agent's duties.**—Such agent shall devote his entire attention to the business; abandon all prior engagements that may conflict with the interest of the State Board of Education; aid and assist counsel in the preparation and trial of all suits that may be directed by the corporation; collect information as to the location and value of all such lands; survey or have surveyed such tracts of such lands, or such other lands necessary to ascertain the location of lands belonging to the corporation as he may deem necessary, under the direction of the corporation. He shall make reports from time to time to the corporation of all the information he obtains, with such suggestions as he may deem proper; and shall prepare a statement of each tract of land owned by the corporation and its location, quantity, as well as ascertained and probable value, distinguishing between those tracts the title to which is doubtful or good; and this statement shall be recorded by him in a book to be kept by the corporation and in a manner, by index or otherwise, easy for reference. (R. C., c. 66, s. 21; Code, s. 2524; 1899, c. 253, s. 3; Rev., s. 4044; C. S., s. 7613.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

§ **146-87. Agent may be removed.**—The agent may be removed by the State Board of Education at any time and another appointed to supply the vacancy, the agent removed being paid a prorata compensation. The agency may be continued in the discretion of the Board. (R. C., c. 66, s. 22; Code, s. 2525; 1899, c. 253, s. 4; 1901, c. 529; Rev., s. 4045; C. S., s. 7614.)

ARTICLE 10.

Lands Sold for Taxes.

§ **146-88. Title vested in State Board of Education.**—The title of all lands acquired by the State by virtue of being sold for taxes is hereby vested in the State Board of Education. (1917, c. 209; C. S., s. 7615.)

§ **146-89. Protection of interest in lands sold for taxes.**—Whenever any lands in which the State Board of Education has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes, special assessment, or under any lien, the State Board of Education is authorized, if in its judgment it is necessary to protect the interest of the Board, to appear at any sale of such lands and to buy the same as any other person would, and for the purpose of paying therefor use any funds which the State Board of Education may have on hand, or, if necessary, borrow the money with which to make such purchase and to execute its notes therefor, and may use any funds coming to the State Board of Education from the sale of any property or otherwise to pay such notes. (1917, c. 246; C. S., s. 7616.)

ARTICLE 11.

Controversies Concerning Lands.

§ **146-90. Title presumed in the Board; tax titles.**—In all controversies and suits for any of the swamp lands to which the State Board of Education or its assigns shall be a party, the title to such lands shall be taken and deemed to be in that corporation or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title to or the right of possession to any lands claimed by the State, the State Board of Education or the University of North Carolina, under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this State, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (1842-3, c. 36, s. 3; R. C., c. 66, s. 24; Code, s. 2527; 1889, c. 243; Rev., s. 4047; C. S., s. 7617.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

Title Presumed in the Board of Education.—When it is shown that the land is swamp land and within a swamp of more than 2,000 acres, the law presumes that the Board of Education is the owner thereof, because grants of such land are void and unauthorized. Board v. Makely, 139 N. C. 31, 51 S. E. 784 (1905); State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912).

Presumption Rebuttable. — The presumption of title in the Board of Education lasts only until good title is shown to be in another party. Shingle Co. v. Lumber Co., 178 N. C. 221, 100 S. E. 332 (1919).

Effect of Presumption as to Title on Interpretation of Deed.—The description "to the high water mark" of nonnavigable arm of the sea, a broad shallow sound, restricts or limits conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marsh lands was at time lots were laid off held by State subject to disposition by State Board of Education, since title to swamp lands is presumed to be in Board or its assignees until a valid title to such land is shown otherwise. Kelly v. King, 225 N. C. 709, 36 S. E. (2d) 220 (1945).

Presumption That Officers Do Their Duty.—It is entirely proper and competent for the State to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. This decision does not, in any way, conflict with the cases of King v. Cooper, 128 N. C. 347, 38 S. E. 924 (1901); Matthews v. Fry, 141 N. C. 582, 54 S. E. 379 (1906); Warren v. Williford, 148 N. C. 474, 62 S. E. 697 (1908), and Rexford v. Phillips, 159 N. C. 213, 74 S. E. 337 (1912), the facts in those cases and this one being very different. State v. Remick, 160 N. C. 562, 76 S. E. 627 (1912).

§ **146-91. Statute of limitations.**—No statute of limitation shall affect the title or bar the action of the State Board of Education or its assigns, unless the same would protect the person holding and claiming adversely against the State; and no statute of limitation shall be a bar to the State Board of Education or of its assigns in the trial of any action in any court of competent jurisdiction against any person, firm, or corporation for damages for timber heretofore or hereafter cut and removed from lands owned by the Board of Education or for any other acts of trespass committed on such lands. (1842, c. 36, s. 5; R. C., c. 66, s. 25; Code, s. 2528; Rev., s. 4048; 1917, c. 287; C. S., s. 7618.)

Editor's Note.—Tillery v. Lumber Co., 172 N. C. 296, 90 S. E. 196 (1916) laid down the rule that this statute was not intended to protect an assignee of the State against the statute of limitations when the action was for damage to timber. By amendment 1917 the part of the section following the semicolon was added making it clear that the statute of limitations was not to be applied in actions for damages to timber.

The purpose of this section was to make applicable to the State Board of Education the same limitations applicable to the

State, and the words "or its assigns" were intended to make applicable to assigns of the Board the same limitations applicable to the Board, but only as applied to adverse possession had while title was in the Board. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383 (1939).

Assignee Not Barred by Statute of Limitations.—In an action for land the plaintiff is not barred by the statute of limitations, which does not run in such cases, unless the State would have been barred by adverse possession. State Board v. Roanoke R. Co., 158 N. C. 313, 73 S. E. 994 (1912)

Harmless Error.—In action for damages for alleged trespass in the cutting of timber on swamp land where defendants claimed adverse possession under color of title of land in dispute, and plaintiff claimed title under deeds executed by the State Board of Education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. Virginia-Carolina Tie, etc., Co. v. Dunbar, 106 F. (2d) 383 (1939).

§ **146-92. Actions by Board; counsel; compromise.**—The State Board of Education may employ counsel learned in the law to aid and assist it in the investigation and prosecution of its title to any of the swamp lands; and may compromise upon such terms as to it shall seem reasonable and just, for the title, so as to secure the corporation an indefeasible right in such lands. (R. C., c. 66, s. 13; Code, s. 2516; Rev., s. 4051; C. S., s. 7619.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

§ **146-93. Agreement with others to prosecute or survey.**—The State Board of Education has full power and authority to agree with any person to prosecute its claim to any swamp lands in any county or counties, or to survey and identify its lands in such counties, and allow to such person a share of any such land as a compensation for his services. (1854, c. 48; R. C., c. 66, s. 23; Code, s. 2526; Rev., s. 4052; C. S., s. 7620.)

Article 12.

Sale of Lands.

§ **146-94. Sale of swamp lands.**—The State Board of Education is authorized and directed to sell and convey the swamp lands at public or private sale at such times, for such prices, in such portions, and on such terms as to it may seem proper; but it shall not sell at a price less than twelve and one-half cents per acre. It shall report each sale to the next session of the General Assembly. The proceeds, as also money received on entries of vacant land, shall become a part of the State Literary Fund. The corporation shall not sell any canal by it constructed under this subchapter. (R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C. S., s. 7621.)

Cross Reference.—For meaning of "corporation" as used in this section, see note under § 146-80.

May Sell Tidelands. — The State Board of Education may sell and convey the fee in tidelands which are not adjacent to navigable water and which comprise one tract of marsh lands of more than 2,000 acres. Home Real Estate Loan, etc., Co. v. Parmele, 214 N. C. 63, 197 S. E. 714 (1938).

§ **146-95. Reservation to the State.**—In any sale which shall be made by the State Board of Education the following powers shall be expressly reserved to the State, to be exercised under such laws as are now or may be enacted by the General Assembly: 1. To make any expedient regulations respecting the repair of the canals which have been cut by the State, or enlargement of such canals. 2. To impose taxes on the lands benefited by those canals for their repair, and which shall not be closed. 3. That the navigation of the canal shall be free to all persons, subject to a right in the State to impose tolls. 4. That all landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by the General Assembly in such cases. 5. That the roads along the banks of the canal shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C. S., s. 7622.)

§ **146-96. Forfeiture for failure to register deeds.**—All the grants and deeds for swamp lands, heretofore made, must have been proved and registered in the county where the lands are situate, within twelve months from November first, one thousand eight hundred and eighty-three, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the State; but the provisions of this section shall be applicable to the swamp lands only which have been surveyed or taken possession of by, or are vested in, the State Board of Education or its agents. (R. S., c. 67, s. 10; R. C., c. 66, s. 10; Code, ss. 2513, 3866; Rev., s. 4046; C. S., s. 7623.)

§ **146-97. Withdrawal of swamp lands from sale under certain conditions; lease or sale to Department of Conservation and Development.**—When it shall be reported to the State Board of Education, after investigation by the Department of Conservation and Development, that any part of the lands now known as "swamp lands" should be retained and reserved from sale in the public interest because of the suitability of the waters thereupon for oyster culture, or for game refuge, or other purposes consistent with public use, the Board of Education shall, if upon examination it is found that the reservation of the said lands for such purpose is proper and to the public interest, reserve the same and make such disposition as will best conserve the public interest by lease or sale to the Department of Conservation and Development as may be thought proper. Such lease or sale to the Department of Conservation and Development may be upon such terms as may be determined upon by the Board of Education: Provided, that no lands now belonging to the State Board of Education upon which there is any natural oyster bed, or which is suitable for oyster culture, shall be subject to sale by the said Board of Education without first giving to the Department of Conservation and Development an opportunity to investigate and to report to the Board of Education as to whether it is desirable to make a reservation thereof under this section. (1935, c. 342.)

§ **146-98. State Board of Education authorized to transfer lands, Pender and Onslow counties, for development as game refuge.**—The State Board of Education is authorized and empowered in its discretion to transfer or lease to the Department of Conservation and Development that certain swamp land now owned by the State Board of Education in Pender and Onslow counties, known as Holly Shelter Pocosin, for the purpose of development, supervision and administration as a game refuge, or game preserve, and as a public hunting ground, in accordance with the provisions of the laws of North Carolina relating to game refuges, game preserves and public hunting grounds.

In the event the above described swamp lands, known as Holly Shelter Pocosin, should hereafter cease to be used as a game refuge, or game preserve, and public hunting ground, the Department of Conservation and Development shall lose all of the rights conferred by this section and the said swamp lands shall revert to the State Board of Education. (1939, c. 232.)

§ **146-99. State Board of Education authorized to convey or lease marsh and swamp lands to State Department of Conservation and Development.**—The State Board of Education is authorized and empowered in its discretion to transfer or lease to the State Department of Conservation and

Development, any or all of the marsh and swamp lands owned by it in the State, for the purpose of development, supervision, and administration of game refuges, or game preserves, or as a public hunting ground. (1945, c. 783, s. 1.)

§ **146-100. Conveyances to contain reversionary clause.**—Any of the said marsh and swamp lands conveyed to the Department of Conservation and Development for the purposes specified in § 146-99 shall contain a reversionary clause providing that upon the said State Department of Conservation and Development ceasing to use said lands for said purposes, the same should revert back to the State Board of Education. (1945, c. 783, s. 2.)

§ **146-101. Board to retain mineral, gas, oil and similar rights.**—All of the mineral, gas, oil, and similar rights in said land shall be reserved by the State Board of Education and the State Department of Conservation and Development shall not acquire any rights to any mineral, gas, or oil rights in such marsh and swamp lands by virtue of any conveyance authorized under § 146-99. (1945, c. 783, s. 3.)

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State Officers.

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ARTICLE 1.

Classification and General Provisions.

§ **147-1. Public State officials classified.**—The public officers of the State are legislative; executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (1868-9, c. 270, ss. 1, 2; Code, s. 3317; Rev., s. 5323; C. S., s. 7624.)

§ **147-2. Legislative officers.**—The legislative officers are:
1. Fifty Senators; 2. One hundred and twenty members of the House of Rep-

resentatives; 3. A Speaker of the House of Representatives; 4. A clerk and assistants in each House; 5. A doorkeeper and assistants in each House; 6. As many subordinates in each House as may be deemed necessary. (1868-9, c. 270, s. 3; Code, s. 3318; Rev., s. 5324; C. S., s. 7625.)

§ **147-3. Executive officers.**—Executive officers are either: 1. Civil; 2. Military. Civil executive officers are: 1. General, or for the whole State; 2. Special, or for special duties in different parts of the State; 3. Local, or for a particular part of the State.

The general civil executive officers of this State are as follows:

1. A Governor;
2. A Lieutenant Governor;
3. Private secretary for the Governor;
4. A Secretary of State;
5. An Auditor;
6. A Treasurer;
7. An Attorney General;
8. A Superintendent of Public Instruction;
9. The members of the Governor's Council;
10. A Commissioner of Agriculture;
11. A Commissioner of Labor;
12. A Commissioner of Insurance. (1868-9, c. 270, ss. 24, 25, 26; Code, s. 3319; 1899, c. 54, ss. 3, 4; 1899, c. 373; 1901, c. 479, s. 4; Rev., s. 5325; C. S., s. 7626; 1931, c. 312, s. 5; 1943, c. 170.)

§ **147-4. Executive officers; election; term; induction into office.**—The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, and an Attorney General, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both Houses of the General Assembly. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law. On the first Tuesday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two Houses of the General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor-elect not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some Justice of the Supreme or judge of the superior court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article three, section one, of the Constitution, and as to the Commissioner of Agriculture, the Commissioner of Insurance, and the Commissioner of Labor shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C. S., s. 7627; 1931, c. 312, s. 5.)

Cross References.—See notes Art. III, §§ 1 and 3 of the Constitution.

§ **147-5. Executive officers report to Governor; reports transmitted to General Assembly.**—It shall be the duty of the officers of the executive department to submit their respective reports to the Governor to be transmitted by him with his message to the General Assembly. (1813, c. 60, s. 2, P. R.; Rev., s. 5373; C. S., s. 7628.)

ARTICLE 2.

Expenses of State Officers and State Departments.

§ **147-6. Expenses paid by warrants of State Auditor; statements filed.**—All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the State Auditor on the State Treasurer. The officer of State or the head of any department thereof shall file with the State Auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the State Auditor shall draw warrants on the State Treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of State or head of any department thereof, as evidenced by statements so approved and filed. The State Treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C. S., s. 7630.)

§ **147-7. Traveling expenses on State's business.**—When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this State, and provide for the expenses thereof, it is required that any officer of the State or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C. S., s. 7631.)

§ **147-8. Mileage allowance to officers or employees using public or private automobiles.**—Where it is provided by any law affecting the State of North Carolina, or any subdivision thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any subdivision thereof or by any such employee or officer of the State or any subdivision thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed six cents per mile. (1931, c. 382, s. 1.)

Editor's Note. — The maximum charge for mileage referred to in this section is now seven cents per mile. See Session Laws 1951, c. 642, s. 6.

§ **147-9. Unlawful to pay more than allowance.**—It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of six cents per mile as set out in § 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2.)

Editor's Note. — The maximum charge for mileage referred to in this section is now seven cents per mile. See Session Laws 1951, c. 642, s. 6.

ARTICLE 3.

The Governor.

§ **147-10. Governor to reside in Raleigh; mansion and accessories.**—The Governor shall reside in the city of Raleigh during his continuance in office. A convenient and commodious furnished dwelling house, supplied with necessary lights, fuel, and water, shall be provided for his accomodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion. (1868-69, c. 270, ss. 32, 33; Code, ss. 3325, 3326; 1885, c. 244; Rev., s. 5327; 1919, c. 307; C. S., s. 7635.)

§ **147-11. Salary of Governor.**—The salary of the Governor shall be ten thousand five hundred dollars ($10,500.00) per annum. He shall be allowed annually the sum of six hundred dollars ($600.00) as traveling expenses in attending to the business for the state and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor: Provided, that from and after the first day of January, 1949, the Governor shall receive an annual salary of fifteen thousand dollars ($15,000.00), payable monthly. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994.)

Editor's Note. — The 1929 amendment raised the Governor's salary from $6,500 to $10,500, and the 1947 amendment added the proviso.

§ **147-12. Powers and duties of Governor.**—In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all State institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the Auditor is hereby directed to draw an order on the Treasurer in favor of the Governor to pay his expenses for each visitation.
2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.
3. He is to make the appointments and supply the vacancies not otherwise provided for in all departments.
4. He is the sole official organ between the government of this State and other states, or the government of the United States.
5. He has the custody of the great seal of the State.
6. If he be apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prize fighting is about to be violated, he shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636.)

Cross References.—For sections placing Governor and Council of State in charge of State's interest in railroads, canals and other works of internal improvements, see §§ 124-1 through 124-7. As to Governor's power to appoint, see Constitution, Art. III, §§ 10 and 13; Art. IV, § 25; Art. XIV, § 5. As to investment of surplus State funds, see § 147-69.1.

Editor's Note. — The 1935 amendment made provision for the Governor and Council of State to set up machinery for administering the Unemployment Compensation Fund.

Mandamus to Compel Performance of Duties. — Under paragraphs 1 and 2 of this section the Governor has the right to bring mandamus proceedings against the State Auditor to compel the performance of the ministerial duties prescribed by statute which do not involve any official discretion. Russell v. Ayer, 120 N. C. 180, 27 S. E. 133 (1897).

The right of the Governor to appoint officers is limited to constitutional officers, and then only when the Constitution expressly provides for such an appointment. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

The Governor making appointments under paragraph 3 of this section, can only do so when the Senate is not in session, and then the appointment is only for the interval until the Senate meets. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

§ **147-13. May convene Council of State.**—The Governor may convene his Council for consultation whenever he may deem it proper. (1868-9, c. 270, s. 40; Code, s. 3335; Rev., s. 5329; C. S., s. 7637.)

§ **147-14. Appointments of private secretary; official correspondence preserved; books produced before General Assembly.**—The Governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the Governor, as are official and important, and such other letters as the Governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the Governor shall produce the same before the General Assembly whenever requested. (1868-9, c. 270, ss. 33, 34; Code, ss. 3326, 3327; Rev., s. 5330; C. S., s. 7638.)

§ **147-15. Salary of private secretary; fees.**—The salary of the private secretary to the Governor shall be fixed by the Governor, with the approval of the Advisory Budget Commission, and shall not be in excess of five thousand dollars ($5,000.00) per annum, and when so fixed shall be effective from and after January fourth, one thousand nine hundred and forty-five. This salary shall be full compensation for all services performed by the secretary. The secretary shall charge and collect the following fees, to be paid by the persons for whom the services are rendered, namely: For the commission of a judge, solicitor, Senator in Congress, Representative in Congress, notary public, or a place of profit, two dollars and fifty cents each; for a testimonial, one dollar; for affixing the seal to a grant, twenty-five cents; for affixing the great seal of the State to State bonds, ten cents. He shall cover the whole of the fees collected into the State treasury. He shall be ex officio secretary of the Board of Internal Improvements, but shall receive no compensation for such service. (R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; Pr. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C. S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45.)

Editor's Note. — The 1945 amendment increased the salary from $4,500 to $5,000 per annum.

§ **147-16. Records kept; certain original applications preserved.**—The Governor shall cause to be kept the following records:

1. A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the Auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C. S., s. 7639.)

§ 147-17. May employ counsel in cases wherein State is interested.—No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except by and with the consent and approval of the Governor. In any case, civil or criminal, in any court in the State or in any other state or territory or in any United States court, or in any other matter, thing, or controversy, of whatever nature or kind, in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation as he may fix for their services. The Attorney General, with his assistants, shall be counsel for all such departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State, and whenever the Attorney General shall advise the Governor that it is impracticable for him and his assistants to render legal services to any State agency, institution, commission, bureau or other organized activity, the Governor may employ such counsel as, in his judgment, should be employed to render such services, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation for their services as he may fix, and he may direct that such warrant be paid out of the appropriations to such department, agency, institution, commission, bureau or other organized activity of the State, or out of the contingent fund. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C. S., s. 7640; 1925, c. 207, s. 3.)

Editor's Note. — The 1925 amendment rewrote this section.

§ 147-18. To designate "Indian Day."—The Governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the State and among the citizens of North Carolina. (Resolution 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving.—The Governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a State and a nation. (1868-9, c. 270, s. 39; Code, s. 3334; Rev., s. 5333; C. S., s. 7641.)

§ 147-20. Governor granted exclusive parole power over inmates of State's institutions.—To the end that greater efficiency and uniformity may be observed in the matter of paroling persons imprisoned or detained under authority of law, exclusive authority is hereby given to the Governor with respect to parole of all persons confined, held, or detained in any prison, reformatory, penal or corrective institution, in the State of North Carolina, by whatsoever name called, where such person is held in such institution by virtue of any final order or judgment of any court in this State, including juvenile courts. (1935, c. 273.)

Editor's Note. — See article in 1 N. C. Law Rev. 47.

§ 147-21. Form and contents of applications for pardon.—Every application for pardon must be made to the Governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (1869-70, c. 171; 1870-1, c. 61; Code, s. 3336; Rev., s. 5334; C. S., s. 7642.)

Cross Reference. — As to Governor's power to pardon, see Art. III, § 6 of the Constitution.

§ **147-22. Application for pardon to include record.**—Any application for the pardon of a prisoner committed to the discharge of the State Highway and Public Works Commission shall include a record of such prisoner since he was committed to the charge of the Commission; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; C. S., s. 7739; 1925, c. 163.)

§ **147-23. Conditional pardons may be granted.**—In any case in which the Governor is authorized by the Constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper. (1905, c. 356; Rev., s. 5335; C. S., s. 7643.)

§ **147-24. Governor's duties when conditions of pardon violated.**—If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the Governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The Governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the Governor may require that he has violated the condition of his pardon, the Governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the Governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (1905, c. 356, ss. 2, 3; Rev., s. 5336; C. S., s. 7644.)

Editor's Note.—This section is reviewed in 1 N. C. Law Rev. 47.

Conditional Pardon. — The Governor may grant a pardon upon a condition precedent that the prisoner pay costs of trial; and upon condition subsequent, that he remain of good character, and be sober and industrious. See Constitution, § 6, Art. 3. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Same—Revocation.—After delivery and acceptance of a pardon with conditions precedent and subsequent, it is irrevocable upon the compliance by the prisoner with the condition precedent, unless he shall violate the conditions subsequent by his conduct after the release. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Rearrest of Paroled Prisoner. — Under the provisions of our State Constitution and Statutes, a "parole" granted by the Governor to a prisoner imports a conditional pardon, and the Governor may cause his rearrest either upon his own admissions, or on such evidence as he may require, for violating the conditions which the prisoner has accepted under the terms of the parole. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

Reasonable Conditions Imposed. — The power of the Governor to grant a conditional pardon is generally subject to the limitation that the conditions imposed must not be illegal, immoral or impossible of performance, which does not apply to cases wherein he is only required not to violate the statute law, and remain of good conduct. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

Same—Breach by Prisoner.—Where the prisoner has accepted his freedom upon the terms of the conditional pardon from the Governor, his breach of such conditions voids the pardon and cancels his right to further immunity from punishment. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

The essential part of a sentence for a violation of the criminal law is the punishment for the offense committed, and not the time the sentence shall begin and end; and where the prisoner has accepted a conditional pardon from the Governor and has obtained his freedom, the breaking of the condition after the term would have otherwise expired, affords no legal excuse why he should not be recommitted to serve out the balance of his sentence. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

§ **147-25. Duty of sheriff and clerk on pardon granted.**—If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the Governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (1905, c. 356, s. 4; Rev., s. 5337; C. S., s. 7645.)

When Sheriff Cannot Defeat Pardon.—The sheriff, by returning a pardon after its delivery and acceptance by the prisoner, cannot defeat or impair its legal results. In re Williams, 149 N. C. 436, 63 S. E. 108 (1908).

Recovery of Fine Paid before Pardon.—Where one convicted of a crime has paid the fine imposed by the court and then has obtained a pardon from the Governor, it is the duty of the court to return the fine upon his application and presenting the pardon, so long as the money remains in its possession and the rights of third persons have not intervened; but where the fine collected has reached its final destination, it is beyond the reach of executive clemency, and may not be recovered. Bynum v. Turner, 171 N. C. 86, 87 S. E. 975 (1916).

§ **147-26. To procure great seal of State; its description.**—The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of wheat in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out; there shall also be inserted thereon the words "esse quam videri." It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C. S., s. 7646.)

§ **147-27. Affixing great seal a second time to public papers.**—In all cases where any person may find it necessary to have the great seal of the State put again to any public paper, other than a grant for lands, he may prefer his petition to the Governor and Council, who shall, if they deem the same proper, direct the seal to be put thereto. (1868-9, c. 270, s. 38; Code, s. 3333; Rev., s. 5338; C. S., s. 7647.)

§ **147-28. To procure seals for departments and courts.**—The Governor shall also procure a seal for each department of the State government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the State, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe-keeping. (1868-9, c. 270, ss. 35, 37; 1883, c. 71; Code, ss. 3328, 3332; Rev., s. 5340; C. S., s. 7648.)

§ **147-29. Seal of Department of State described.** — The seal of the Department of State shall be two inches in diameter and shall be of the same design as the great seal of the State, with the words "State of North Carolina, Department of State," surrounding the figures. (1883, c. 238; Code, s. 3330; Rev., s. 5341; C. S., s. 7649.)

§ **147-30. To provide new seals when necessary.**—Whenever the great seal of the State shall be lost or so worn or defaced as to render it unfit for use, the Governor shall provide a new one and when such new one is provided the former one, if it can be found, shall be destroyed in the presence of the Governor. Whenever the seal of any department of the State shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county. (1868-9, c. 270, s. 36; Code, s. 3331; Rev., s. 5342; C. S., s. 7650; 1943, c. 632.)

Editor's Note. — The 1943 amendment rewrote this section.

§ **147-31. Payment for seals.**—The Treasurer shall pay the expense of procuring all seals provided for in this chapter, upon the warrant of the Auditor. (1868-9, c. 270, s. 37; 1883, c. 71; Code, s. 3332; Rev., s. 5343; C. S., s. 7651.)

§ **147-32. Compensation for widows of Governors.**—All widows of the Governors of the State of North Carolina who were married to said Governors before or during their term of office as Governor of the State of North Carolina shall be paid the sum of twelve hundred ($1,200.00) dollars per annum during the term of their natural lives, the same to be paid in equal monthly installments of one hundred ($100.00) dollars per month out of the State treasury upon warrant duly drawn thereon: Provided, that no payment shall be made under this section unless and until the Council of State shall find that the beneficiary does not have an income adequate for her support. Provided, further that such compensation shall terminate upon the subsequent remarriage of such persons. (1937, c. 416; 1947, c. 897, ss. 1, 2.)

Editor's Note. — The 1947 amendment added the last proviso and struck out the words "and who have attained, or shall hereafter attain, the age of sixty-five years" formerly appearing after the words "North Carolina".

§ **147-33. Compensation of Lieutenant Governor.** — As authorized by article III, section eleven, of the Constitution of North Carolina, the salary of the Lieutenant Governor is hereby fixed at two thousand and one hundred dollars ($2,100.00) per year, which amount shall be in addition to the compensation for the Lieutenant Governor as the presiding officer of the Senate, provided by article II, section twenty-eight, of the Constitution of North Carolina. Whenever the Lieutenant Governor shall attend any meeting of State officials, or other meetings which by law he is required to attend, he shall be paid his necessary traveling expenses in going to and from such meetings. (1911, c. 103; C. S., s. 3862; 1945, c. 1.)

Editor's Note. — The 1945 amendment rewrote this section.

ARTICLE 3A.

Emergency War Powers of Governor.

§ **147-33.1. Short title.**—This article may be cited as the "North Carolina Emergency War Powers Act." (1943, c. 706, s. 1.)

Editor's Note. — Session Laws 1945, c. 7, re-enacted without change the first six sections of this article.

For comment on this enactment, see 21 N. C. Law Rev. 372.

§ **147-33.2. Emergency war powers of the Governor.**—Upon his own initiative, or on the request or recommendation of the President of the United States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

(a) Formulate and execute plans for:

(1) The inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessaries of life and health, and of land, labor, materials, industries, facilities and other resources of the State necessary or useful in the prosecution of the war;

(2) Organization and co-ordination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the State for the duration of the war and in the interest of State and national defense.

(b) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.

(c) Mobilize, co-ordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State, and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the State in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

(d) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilites.

(e) Accept, or authorize any officer or department of the State to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.

(f) Authorize any department or agency of the State to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the State upon such terms and conditions as he may impose, or, on behalf of the State, to make a contract directly therefor.

(g) Authorize the temporary transfer of personnel of the State for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.

(h) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

(1) The use of the roads, streets and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the state; provided that any changes in the laws referred to in this subsection shall be first approved by the state highway and public works commission and the commissioner of motor vehicles of the state;

(2) Public health, in so far as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the State Board of Health;

(3) Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;

(4) Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia in addition to the existing units of the State guard; to provide transportation and facilities for mobilization and full utilization of the State guard, or other units of militia, in such emergency; and to allocate from the contingency and emergency fund such amounts as may be necessary for such purposes during the period of such emergency;

(5) Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;

(i) Co-operate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and co-ordinate and direct the work of the offices and agencies of the State having duties and responsibilities directly connected with the war effort and the protection of the civilian population.

(j) Aid in the administration and enforcement in this State of any rationing, freezing, price-fixing or similar order or regulation duly promulgated by any federal officer or agency under or pursuant to the authority of any act of Congress or of any order or proclamation of the President of the United States, by making temporarily available personnel and facilities of the State to assist in the administration thereof and/or by adopting and promulgating in this State an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the Secretary of State, prescribing the penalties for the violation thereof, and specifying the State and local officers and agencies to be charged with the enforcement thereof.

(k) Formulate and execute plans and adopt rules for:

(1) The organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air-raid warnings and signals;

(2) The organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.

(l) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this article, and amend or rescind the same.

(m) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of revelant books, papers, records or documents, in connection with any investigation made by him under the authority of this article. (1943, c. 706, s. 2.)

§ **147-33.3. Orders, rules and regulations.**—All orders, rules and regulations promulgated by the Governor pursuant to this article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the Secretary of State. All laws, ordinances, rules and regulations, in so far as they are inconsistent with the provisions of this article or of any rule, order or regulation made pursuant to this article, shall be suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. (1943, c. 706, s. 3.)

§ **147-33.4. Immunity.**—Neither the State nor any political subdivision thereof, nor the agents or representatives of the State or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this article, shall be liable for the death of or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under Workmen's Compensation Law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4.)

§ **147-33.5. Federal action controlling.**—All action taken under this article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5.)

§ **147-33.6. Construction of article.**—This article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6.)

§ **147-33.7. Duration of article.**—This article shall be in full force and effect while the existing state of war continues with any foreign power and for six months thereafter. None of the powers herein granted shall be thereafter exercised and no contract, order, rule or regulation made, or other action taken, pursuant to this article shall thereafter be enforceable or effective, except for the performance of an obligation theretofore incurred under this article or the prosecution of an act theretofore committed in violation thereof. Contracts, orders, rules or regulations made or other actions taken pursuant to this article prior to the convening of the General Assembly of one thousand nine hundred and forty-five shall continue in effect according to their terms until the expiration date specified above, unless they shall be sooner repealed or modified by the Governor, with the approval of the Council of State, in the exercise of powers granted under this article, or by this or a subsequent session of the General Assembly. (1943, c. 706, s. 8; 1945, c. 7.)

Editor's Note. — The 1945 amendment added the last sentence and made other changes.

Article 4.

Secretary of State.

§ **147-34. Office and office hours.**—The Secretary of State shall attend at his office, in the city of Raleigh, between the hours of ten o'clock a. m. and three o'clock p. m., on every day of the year, Sundays and legal holidays excepted. (1868-9, c. 270, s. 44; 1870-1, c. 111; Code, s. 3339; Rev., s. 5344; C. S., s. 7652.)

§ **147-35. Salary of Secretary of State.**—The salary of the Secretary of State shall be seven thousand five hundred dollars a year, payable monthly: Provided, that the salary, from and after the expiration of the present term of office, shall be nine thousand dollars per year, payable in equal monthly installments. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278.)

Cross Reference.—As to bond of Secretary of State, see § 128-8.

Editor's Note. — The amendments increased the salary from time to time, the 1949 amendment adding the proviso.

§ **147-36. Duties of Secretary of State.**—It is the duty of the Secretary of State:

1. To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two Houses, or either of them;

2. To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

3. To receive and keep all conveyances and mortgages belonging to the State;

4. To distribute annually the statutes, the legislative journals and the reports of the Supreme Court;

5. To distribute the acts of Congress received at his office in the manner prescribed for the statutes of the State;

6. To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

7. To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

8. To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

9. To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

10. To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

11. To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

12. To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed; and

13. To receive and keep all oaths of public officials required by law to be filed in his office, and as Secretary of State, he is fully empowered to administer official oaths to any public official of whom an oath is required. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543.)

Cross Reference.—As to issuing grants, see § 146-47.

Editor's Note. — The 1941 amendment struck out the words "and documents" formerly appearing after the word "journals" in subsection 4. And the 1943 amendments added subsections 7 through 13.

For act authorizing the Secretary of State to enroll in a book the Constitution of 1868 and amendments thereto, see Session Laws 1943, c. 107.

§ **147-37. Secretary of State; fees to be collected.**—The Secretary of State shall collect the following fees, namely: Copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents, and for every additional copy-sheet, ten cents; correcting an error not made by himself in a patent, fifty cents; copying and certifying a plot and survey, fifty cents for each warrant or for each six hundred and forty acres contained in the plot or survey, not to exceed five dollars for one copy; receiving surveyor's return, making out, recording and endorsing grants, sixty cents; each certificate, ten cents; filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents; copying an entry from the journals of the Assembly, forty cents; copying and certifying the laws of other states, twenty cents for each copy-sheet; and in all cases not otherwise provided for, the Secretary of State shall receive for copies of records from his office, one dollar for the first three copy-sheets and ten cents a copy-sheet thereafter. (R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C. S., s. 3864.)

§ **147-38. Copy-sheet defined.**—A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1855," "$250.90," shall be estimated and charged as one word. (R. C., c. 102, s. 42; 1868-9, c. 279, s. 556; Code, s. 3757; Rev., s. 2805; C. S., s. 3851.)

§ **147-39. Custodian of statutes, records, deeds, etc.**—The Secretary of State is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. (R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; Code, s. 3337; Rev., s. 5347; C. S., s. 7656.)

§ **147-40. Compensation of indexer of laws.**—The assistant to the Secretary of State who indexes the laws and prepares the laws and captions for publication shall receive a compensation to be fixed by the Budget Bureau. (1903, c. 3; Rev., s. 2733; C. S., s. 3866; 1931, c. 277; 1933, c. 46.)

§ **147-41. To keep records of oyster grants.**—The Secretary of State shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of chapter 119 of the laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (1887, c. 119, s. 14; Rev., s. 2381; C. S., s. 7657.)

§ **147-42. Binding original statutes, resolutions, and documents.**—The original statutes and joint resolutions passed at each session of the General Assembly the Secretary of State shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (1866-7, c. 71; 1868-9, c. 270, s. 46; Code, s. 3343; Rev., s. 5348; C. S., s. 7658.)

§ **147-43. Reports of State officers.**—The Secretary of State shall file and keep in his office one copy of each of the reports of State officers in the best binding in which any such report is issued, and the State Librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C. S., s. 7300.)

§ **147-43.1. Secretary of State to prepare index to acts and resolutions.**—The Secretary of State shall biennially, at the beginning of each regular session of the General Assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes to the acts and resolutions, both public and private, ratified by the General Assembly. All index references with respect to the Session Laws shall refer to the chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers. (1903, c. 3; Rev., s. 4423; C. S., s. 6109; 1927, c. 217, s. 1; 1951, c. 3, s. 2.)

Editor's Note. — This section formerly appeared as § 120-23 and was transferred to its present position by Session Laws 1943, c. 543.

The 1951 amendment struck out the words "and side or marginal notes" formerly appearing after the word "indexes" in the first sentence, "it being the intent and purpose of this amendment to discontinue the requirement that marginal notes be prepared and included in the volumes of the Session Laws." The amendment also added the second sentence.

§ **147-43.2. Secretary of State to have laws printed.**—The Secretary of State, immediately upon the termination of each session of the General Assembly, shall cause to be published in one volume all the laws and joint resolutions passed at such session, whether public, private, general or special within the meaning of the Constitution and without regard to classification, except that the laws and resolutions shall be kept separate and indexed separately; and the volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing, he shall omit the certificate required to be endorsed upon the original bills and resolutions; but he shall insert immediately at the end of each law or resolution the word "ratified," adding the day, month and year. (1868-9, c. 270, s. 14; Code, s. 2869; Rev., s. 4425; C. S., s. 6111; 1943, c. 48, s. 1.)

Editor's Note. — The 1943 amendment rewrote the section. This section formerly appeared as § 120-24 and was transferred to its present position by Session Laws 1943, c. 543.

Session Laws 1943, c. 33, being an act revising and consolidating the public and general statutes of the State of North Carolina, was exempted from the provisions of this section by Session Laws 1943, c. 15, s. 2. The said act is in a separate bound volume on file in the office of the Secretary of State.

§ **147-43.3. Number to be printed.**—There shall not be printed more than four thousand (4,000) volumes of Session Laws, twenty-five hundred (2500) to full bound and fifteen hundred (1500) to half bound; six hundred (600) volumes of House Journals and six hundred (600) volumes of Senate Journals of each session of the General Assembly. (1929, c. 85, s. 1; 1941, c. 379, s. 6; 1943, c. 48, s. 5.)

Editor's Note. — The 1941 amendment increased the authorized printing of the House and Senate Journals from five to six hundred volumes. The 1943 amendment substituted "session" for "public" and omitted a former provision relating to public-local and private laws.

This section formerly appeared as § 120-25 and was transferred to its present position by Session Laws 1943, c. 543.

§ **147-44:** Repealed by Session Laws 1943, c. 48, s. 2.

§ **147-45. Distribution of copies of Session Laws, and other State publications by Secretary of State.**—The Secretary of State shall, at the State's expense, as soon as possible after publication, distribute such number of copies of the Session Laws, Senate and House Journals, and Supreme Court Reports to federal, State and local governmental officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Supreme Court Reports
State Departments and Officials:			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	7	1	5
Commissioner of Agriculture	3	1	1
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
State Board of Health	3	1	0
State Highway and Public Works Commission	3	1	1
State Board of Charities and Public Welfare	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Commissioner of Revenue	5	0	1
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	3	1	3
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Director of Probation	2	0	1
Commissioner of Paroles	2	0	1
Department of Conservation and Development	3	1	0
North Carolina Library Commission	2	0	0
Veterans' Loan Commission	1	0	0
Industrial Commission	4	0	4
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Justices of the Supreme Court	1 each	1 each	1 each
Clerk of the Supreme Court	1	1	0
Judges of the Superior Court	1 each	0	1 each
Emergency Judges of the Superior Court	1 each	0	1 each

	Session Laws	House and Senate Journals	Supreme Court Reports
Special Judges of the Superior Court	1 each	0	1 each
Solicitors of the Superior Court	1 each	0	1 each
Employment Security Commission	1	1	1
State Employment Service	1	0	0
State Commission for the Blind	1	0	1
State Prison	1	0	0
Western North Carolina Sanatorium	1	0	0
Eastern North Carolina Sanatorium	1	0	0
State Department of Archives and History	1	0	0
State Library	20	20	2
Supreme Court Library		as many as requested	
Supreme Court Reporter	0	0	1
General Assembly Members and Officials:			
Representatives of General Assembly	1 each	1 each	0
State Senators	1 each	1 each	0
Principal Clerk—Senate	1	1	0
Reading Clerk—Senate	1	1	0
Sergeant-at-Arms—Senate	1	1	0
Principal Clerk—House	1	1	0
Reading Clerk—House	1	1	0
Sergeant-at-Arms—House	1	1	0
Enrolling Clerk	1	0	0
Engrossing Clerk—House	1	1	0
Indexer of the Laws	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill	65	56	71
North Carolina State College of Agriculture and Engineering of the University of North Carolina	5	1	1
Woman's College of the University of North Carolina	3	1	1
Duke University	25	25	25
Davidson College	1	1	1
Wake Forest College	5	5	25
Lenoir Rhyne College	1	1	1
Elon College	1	1	1
Guilford College	1	1	1
East Carolina Teachers College	1	1	1
Catawba College	0	0	1
North Carolina School for the Deaf	1	0	0
State Hospital at Raleigh	1	0	0
State Hospital at Morganton	1	0	0
State Hospital at Goldsboro	1	0	0
Caswell Training School	1	0	0
School for the Blind and Deaf	1	0	0
State Normal School at Fayetteville	1	0	1
North Carolina College for Negroes	5	5	5
Local Officials:			
Clerks of the Superior Courts	1 each	1 each	1 each

	Session Laws	House and Senate Journals	Supreme Court Reports
Sheriffs of the Counties	1 each	0	0
Registers of Deeds of the Counties	1 each	1 each	0
Chairman of the Boards of County Commissioners	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President	1	0	1
Secretary of State	1	1	1
Secretary of War	1	0	1
Secretary of Navy	1	0	1
Secretary of Agriculture	1	0	1
Attorney General	1	0	1
Postmaster General	1	0	1
Marshal of United States Supreme Court	1	0	1
Department of Justice	1	0	1
Bureau of Census	1	0	1
Treasury Department	1	0	1
Department of Internal Revenue	1	0	1
Department of Labor	1	1	1
Bureau of Public Roads	1	0	1
Department of Commerce	1	1	1
Department of Interior	1	0	1
Veterans' Administration	1	0	1
Securities and Exchange Commission	1	0	1
Social Security Board	1	0	1
Work Projects Administration	1	0	1
Farm Credit Administration	1	0	1
Library of Congress	8	2	5
Federal Judges resident in North Carolina	1 each	0	1 each
Federal District Attorneys resident in North Carolina	1 each	0	1 each
Clerks of Federal Court resident in North Carolina	1 each	0	1 each
Chief executives or designated libraries of governments of other states, territories and countries, including Canada, Canal Zone, Porto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library	1 each	0	1 each

Upon his appointment or election each justice of the Supreme Court shall receive for his private use one complete and up-to-date set of the Reports of the Supreme Court. The copies of Reports furnished each justice as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of Reports.

One copy each of the Public Laws, the Public-Local Laws and the Supreme

Court Reports shall be furnished the head of any department of State government created in the future.

Five complete sets of the Public Laws, the Public-Local and Private laws, the Senate and House Journals and the Supreme Court Reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287.)

Editor's Note. — The 1943 amendment substituted "Session Laws" for "Public Laws, Public-Local and Private Laws" in the introductory paragraph. It also substituted "Session Laws" for "Public Laws" in the table and struck out of the table the former column relating to public-local and private laws. Section 6 of the amendatory act provided that wherever the words "public," "public-local" and "private" or a combination of these words appear in the Consolidated Statutes and acts amendatory thereto, relating to the printing and distribution of the acts of the General Assembly, the same shall be stricken out and the words "Session Laws" inserted in lieu thereof.

The 1945 amendment increased from 3 to 4 the session laws and Supreme Court Reports distributed to the Industrial Commission.

The 1949 amendment increased from 59 to 65 the number of session laws, from 54 to 56 the number of House and Senate Journals, and from 65 to 71 the number of Supreme Court Reports, distributed to the University of North Carolina.

The 1951 amendment increased from 7 to 25 the Supreme Court Reports, distributed to Wake Forest College.

In the above section, "Employment Security Commission" has been substituted for "Unemployment Compensation Commission" by virtue of § 96-1.1; and "State Department of Archives and History" has been substituted for "North Carolina Historical Commission" by virtue of Session Laws 1943, c. 237.

§ **147-46. Publications furnished institutions of learning.**—The Secretary of State, upon application made by any chartered institution of learning in this State, for which provision is not elsewhere made in § 147-45, having a library of not less than five thousand volumes, shall furnish and transmit to each of such institutions, to be kept in its library, a copy of all future current Supreme Court Reports, Session Laws of the General Assembly and Journals of both Houses, whenever the same shall be ready for distribution. He shall furnish to each of such institutions, if he have them on hand, or when reprinted or otherwise obtained, one volume each of such of the Supreme Court Reports, Public Laws, Public-Local and Private Laws, and Journals as have not been theretofore furnished. (1941, c. 379, s. 2; 1943, c. 48, s. 4.)

Editor's Note. — The 1943 amendment substituted in the first sentence the words "session laws" for the words "public-local and private laws."

§ **147-46.1. Publications furnished State departments, bureaus, institutions and agencies.** — Upon request of any State department, bureau, institution or agency, and upon authorization by the Governor and Council of State, the Secretary of State shall supply to such department, bureau, institution or agency copies of any State publications then available to replace worn, damaged or lost copies and such additional sets or parts of sets as may be requested to meet the reasonable needs of such departments, bureaus, institutions or agencies, disclosed by the request.

This section shall not authorize the reprinting of any State publications which would not be ordered without reference to the provisions hereof. (1947, c. 639.)

§ **147-47. Apportionment of half bound volumes of Session Laws among justices of the peace.**—The Secretary of State shall apportion the fifteen hundred copies of half bound session laws among the justices of the peace of the State on a county population basis and distribute them to the justices. The Secretary of State shall notify all the clerks of the superior court of the number of copies of Session Laws available for distribution for justices of the peace in their respective counties, and the clerk shall thereupon certify to the Secretary of State the names and post office addresses of a like number of qualified and active justices of the peace thus entitled to receive said laws. (1941, c. 379, s. 3; 1943, c. 48, s. 4.)

Editor's Note. — The 1943 amendment substituted "session laws" for "public laws."

§ **147-48. Sale of Laws and Journals and Supreme Court Reports.**—Such Laws and Journals as may be printed in excess of the number directed to be distributed the Secretary of State may sell at such price as he deems reasonable, not exceeding two dollars for full bound copies of the Session Laws; and not exceeding ten per centum in advance of the cost for copies of the Journals.

The Secretary of State shall sell any and all of the Supreme Court Reports, both the current reports and the reprints, at such price as he deems reasonable, not less than one dollar and fifty cents per volume. The Secretary of State may allow to regular licensed booksellers in this State a discount on Laws, Journals and Supreme Court Reports not exceeding twelve and one-half per centum. All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4.)

Editor's Note. — The 1943 amendment substituted "session laws" for "public laws" in the first paragraph.

§ **147-49. Disposition of damaged and unsaleable publications.**—The Secretary of State is hereby authorized and empowered to dispose of such damaged and unsaleable North Carolina Supreme Court Reports, House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State, the Supreme Court Reporter and the Marshal-Librarian of the Supreme Court. (1939, c. 345.)

§ **147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.**—Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina College for Negroes	5 copies;
Library of Congress	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 5.)

§ **147-51. Clerks of superior courts to furnish inventory of Reports; lending prohibited.**—On or before the first Monday in June of each and every year after March 9, 1927, the clerks of the superior courts of the State are required to furnish to the Secretary of State an inventory of the volumes of the Reports of the Supreme Court of North Carolina which they have on hand.

From and after March 9, 1927, the clerks of the superior courts of the State of North Carolina are held officially responsible for the volumes of the North

Carolina Supreme Court Reports furnished and to be furnished them by the State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said Reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259.)

§ **147-52. Reprints of Supreme Court Reports.**—The Supreme Court is authorized to have such of the Reports of the Supreme Court of the State of North Carolina as are not on hand for sale, republished and numbered consecutively, retaining the present numbers and names of the Reporters and by means of star pages in the margin retaining the original numbering of the pages. The Supreme Court is authorized and directed to have such Reports reprinted without any alteration from the original edition thereof, except as may be directed by the Supreme Court. The contract for such reprinting and republishing shall be made by the Supreme Court in the manner prescribed in § 7-34. Such republication shall thus continue until the State shall have for sale all of such Reports; and hereafter when the editions of any number or volume of the Supreme Court Reports shall be exhausted, it shall be the duty of the Supreme Court to have the same reprinted under the provisions of this section and § 7-34. In reprinting the Reports that have already been annotated, the annotations and the additional indexes therein shall be retained and such Reports shall be further annotated so as to make the annotations in all reprints complete up to the date of the reprinting thereof. In reprinting Reports the Supreme Court is authorized to provide for, and to secure, such further annotations for Reports that have been heretofore annotated and for the annotating of the Reports that have not been heretofore annotated and the costs thereof as provided in the contract made by the Supreme Court with the annotator selected by it, shall be paid as a part of the cost of reprinting the said Reports. (Code, s. 3634; 1885, c. 309; 1889, c. 473, ss. 1-4, 6; Rev., s. 5361; 1907, c. 503; 1917, cc. 201, 292; C. S., s. 7671; 1923, c. 176; 1929, c. 39, s. 2.)

§ **147-53:** Superseded by Session Laws 1943, c. 716.

Editor's Note. — The act superseding this section provided for the final disposition of surplus copies of the Consolidated Statutes.

§ **147-54. Payment of proceeds of sales to Treasurer.**—The Secretary of State, as often as now provided by law, shall pay over to the Treasurer of the State the proceeds of any and all sales which may be made by him under authorization of § 147-53. (1933, c. 115, s. 2.)

Editor's Note. — As § 147-53 has been superseded, this section would seem to be obsolete.

§ **147-54.1. Division of Publications; duties.**—The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the assistant to the Secretary of State. This Division shall collect, tabulate, annotate, and digest information for the use of members and committees of the General Assembly, and other officials of the State and of the various counties and cities, upon all questions of State, county, and municipal legislation; make references and analytical comparisons of legislation upon similar questions in other States and nations; and have at hand for the use of the members of the General Assembly the laws of other states and nations as well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions under consideration.

It shall also be the duty of the Division of Publications to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the General Assembly. Upon request by members of the General Assembly, the Division shall secure all available information on any particular subject.

The Division shall also perform all such other duties as may be assigned by the Secretary of State.

The several departments of the State government shall, upon request of the Division of Publications, supply said Division with such copies of their reports and other publications as may be necessary to effect exchanges with other states for their publications of a similar character for the use of the said Division. (1915, c. 202, ss. 1, 2; C. S., ss. 6147, 6148; 1939, c. 316.)

Editor's Note. — This section formerly appeared as § 143-167 and was transferred to its present number by Session Laws 1943, c. 543.

Article 5.

Auditor.

§ **147-55. Salary of Auditor.**—The salary of the State Auditor shall be seven thousand five hundred dollars a year, payable monthly: Provided, that the salary, from and after the expiration of the present term of office shall be nine thousand dollars per year, payable in equal monthly installments. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; 1907, c. 994, s. 2; 1911, c. 108, s. 1; 1911, c. 136, s. 1; 1913, c. 172; 1919, c. 149; 1919, c. 247, s. 7; C. S., s. 3867; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278.)

Editor's Note. — The amendments increased the salary from time to time, the 1949 amendment adding the proviso.

§ **147-56. Office and office hours.**—The Auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. (1868-9, c. 270, ss. 69, 70; Code, s. 3353; Rev., s. 5364; C. S., s. 7674.)

§ **147-57. Bond.**—The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. (1929, c. 337, s. 1.)

§ **147-58. Duties and authority of Auditor.** — The duties and authority of the State Auditor shall be as herein set out:

1. The Auditor shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Auditor may deem advisable.

2. The Auditor shall have the exclusive power and authority to issue all warrants for the payment of money upon the State Treasurer; and it shall be the Auditor's duty, before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants. He shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant. When considered expedient, due to its size or location, a department or institution may make expenditures through a disbursing account with the State Treasurer; provided that all deposits in disbursing accounts shall be by Auditor's warrant, or otherwise, when approved by the Auditor; and further provided that copy of each voucher mak-

ing withdrawals from this account, together with such supporting data as may be required by the Auditor shall be forwarded to the Auditor monthly or otherwise when required by the Auditor.

3. The Auditor shall audit annually, and at such other times as may be deemed expedient, the accounts of every State department, officer, board, commission, institution, or other agency, having the responsibility for the handling of any State funds. The Auditor shall, at such times as may be deemed expedient, audit all funds held by any institution or State agency or any funds under the control of the administration of any institution or agency except athletic funds. The Auditor shall, at such times as may be deemed expedient, audit the records of all performances staged on State property under direction of any State agency or wherein any State agency shares in a percentage of gross admission receipts. The Auditor may audit at such times as he deems expedient the accounts of any private or semi-private agency receiving State aid; provided this shall not affect the operation and validity of § 143-20 of the General Statutes.

If the Auditor shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds is contemplated but not consummated, in either case, he shall forthwith lay the facts before the Governor.

4. The Auditor shall make special investigations upon commission from the Governor.

5. Upon completion of each audit and investigation, the Auditor shall prepare a report of his findings and recommendations. He shall furnish one copy to the Budget Bureau, one copy to the head of the agency to which the report pertains, and copies to such persons as he may deem advisable.

6. The Auditor shall keep an account between the State and the Treasurer, and therein charge the Treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

7. The Auditor shall examine as often as may be deemed necessary the accounts of the debits and credits in the bank book kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith, in writing to the Governor.

8. The Auditor shall require, when deemed necessary, all persons who have received moneys or securities, or have had the disposition or management of any property of the State, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

9. The Auditor shall require all persons who have received any moneys belonging to the State, and who have not accounted therefor, to settle their accounts; upon failure of any person to settle accounts, the Auditor is authorized and directed to call the matter to the attention of the Attorney General and furnish such information as he may direct.

10. The Auditor shall liquidate the claims of all persons against the State, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereof, to the General Assembly.

11. The Auditor shall report to the Governor annually, and to the General Assembly at the beginning of each biennial session thereof, a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year.

12. The Auditor may examine the accounts and records of any bank or trust company relating to transactions with the State Treasurer, or with any State department, institution, board, commission, officer, or other agency, or he may

require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

13. The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence, files, records, money, investments, and property of any State department, institution, board, commission, officer, or other agency as it relates to the handling of State funds. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request. Should any officer or employee fail to perform the requirements of this section, he shall be guilty of a misdemeanor. The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as it relates to transactions with any department, board, officer, commission, institution, or other agency of the State; provided that such examination shall be limited to those things which might relate to irregularities on the part of any department, board, officer, employee, commission, institution or other State agency.

14. The Auditor shall supervise the bookkeeping and accounting system in use by any of the State departments, boards, officers, commissions, institutions and agencies. The Auditor may, as often as he deems advisable, make a detailed examination of such bookkeeping and accounting system in use and advise them of necessary improvement in the accounting procedure. Any State department, board, commission, institution, or agency which plans to change its accounting system must first submit its plan to the Auditor and the Director of the Budget and obtain approval in accordance with provision of G. S. 143-22. In devising systems of accounting, the Auditor and Director of the Budget shall take into consideration the checks and balances necessary to safeguard the receipt, disbursement, and custody of State funds.

15. Should any of the officers and/or employees of a State department or institution refuse or neglect to adopt such system of accounting as the Auditor and the Director of the Budget may devise, adopt, and promulgate, then upon suit of the Attorney General a writ of mandamus will lie to compel such adoption, and it shall be the duty of the Attorney General to forthwith institute such suit in any such case.

16. The Auditor, or his deputy, while conducting an examination authorized by these sections, shall have the power to administer oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of such person for the purpose of such an examination. If any person shall willfully swear falsely in such an examination, he shall be guilty of perjury.

17. The Auditor may appoint a deputy auditor to perform any duties pertaining to the office, and he may appoint a deputy auditor for any specific purpose; provided that any deputy so appointed shall not be authorized to transfer authority to any other person.

18. Nothing under this article shall be construed to affect the right of the Director of the Budget to require information from State agencies as set out in § 143-9. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1.)

Cross References.—As to being constitutional office, see Const., Art. III, §§ 1 and 15. As to mandamus by Governor to compel performance of certain duties, see note to § 147-12. As to reports to be furnished the Director of the Budget, see § 143-8.

Editor's Note. — The 1951 amendment rewrote this section. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

Mandamus to Compel Issuance of Warrant.—The duty of the Auditor under paragraph 7 is not a ministerial duty but is one involving judgment and discretion, and mandamus will not lie against him for refusal to issue a warrant for payment of a claim he does not approve. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443 (1894).

Where a clerk of the General Assembly had received a warrant for the entire number of days to which he was entitled, at seven dollars per day, he had no right to a writ of mandamus against the Auditor of the State because he refused to give him a warrant for three dollars per day additional for the same number of days for which he had heretofore obtained a warrant. Boner v. Adams, 65 N. C. 639 (1871).

Report to the General Assembly.—The Auditor of the State is not a mere ministerial officer; when a claim is presented to him against the State, he is to decide whether there is a sufficient provision of law for its payment, and if in his opinion there is not sufficient provision of law, he must examine the claim and report the fact, with his opinion to the General Assembly. Boner v. Adams, 65 N. C. 639 (1871).

Cited in Bank v. Worth, 117 N. C. 146, 23 S. E. 160 (1895).

§ **147-59. Warrants to bear limitations; presented within sixty days.**—All warrants drawn by the State Auditor or any State department, or agency, bureau, or commission on the Treasurer, shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to-wit: "This warrant will not be paid if presented to the Treasurer after the expiration of sixty (60) days from the date hereof"; and the State Treasurer is hereby prohibited from paying any warrant drawn by the State Auditor, or any State department, or agency, bureau, or commission, unless the same shall be presented within sixty (60) days from the date of such warrant. (1925, c. 246, s. 1; 1945, c. 496, s. 1.)

Editor's Note.—Prior to the 1945 amendment this section applied only to warrants drawn by the State Auditor.

§ **147-60. Surrender of barred warrant; issue of new warrant.**—Any person, firm or corporation holding a warrant drawn by the Auditor which cannot be paid because of the provisions of §§ 147-59 and 147-61 may present the same to the Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof; or in his discretion, he may validate the original warrant. (1925, c. 246, s. 2; 1945, c. 496, s. 2; 1951, c. 1010, s. 3.)

Editor's Note. — The 1945 amendment substituted the words "issuing State officer, department, agency, bureau, or commission" for the words "State Auditor."

The 1951 amendment deleted the words inserted by the 1945 amendment and substituted "Auditor" therefor, inserted the words "and cancel the same", added the clause following the semicolon, and made other changes of a minor nature. Section 4 of the amendatory act provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ **147-61. Warrants issued before March 10, 1925.**—Every person, firm or corporation holding a warrant, drawn and issued by the State Auditor prior to March 10, 1925, shall present the same for payment on or before May 1, 1925. If such warrant is not presented to the State Treasurer for payment prior to May 1, 1925, the same shall not be paid, but the holder thereof shall be notified of the provisions of §§ 147-59, 147-60 and 147-61, and upon satisfactory proof that the holder thereof is the proper owner and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, the warrant may be surrendered to the Auditor and cancelled and the Auditor is authorized and empowered to issue another and new warrant for like amount in lieu thereof. (1925, c. 246, s. 3.)

§ **147-62. Assignments of claims against State.**—All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof, shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, and life insurance companies: Provided, further, that employees of the State or of any of its institutions, departments, bureaus or commissions who are members of the State Employees Credit Union may in writing authorize any periodical payment or obligation to such Credit Union to be deducted from their salaries or wages as such employee, and such deductions shall be made and paid to said Credit Union as and when said salaries and wages are payable: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128.)

Editor's Note. — The first proviso was added by the 1935 amendment, the 1939 amendment added the second proviso, and the 1941 amendment added the last proviso.

For assignments in general, see 13 N. C. Law Rev. 113, 118.

§ **147-63. Warrants for money paid into treasury by mistake.**—Whenever the Governor and Council of State are satisfied that moneys have been paid into the treasury through mistake, they may direct the Auditor to draw his warrant therefor on the Treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages. (1868-9, c. 270, s. 66; Code, s. 3351; Rev., s. 5366; C. S., s. 7676.)

§ **147-64. Warrants for surplus proceeds of sale of property mortgaged to State.**—Whenever any real property mortgaged to the State, or bought in for the benefit of the State, of which a certificate shall have been given to a former purchaser, is sold by the Attorney General on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the State, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The Auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (1868-9, c. 270, s. 68; Code, s. 3352; Rev., s. 5368; C. S., s. 7678.)

Article 6.

Treasurer.

§ **147-65. Salary of State Treasurer.**—The salary of the State Treasurer shall be seven thousand five hundred dollars a year, payable monthly: Provided, that the salary, from and after the expiration of the present term of office, shall be nine thousand dollars per year, payable in equal monthly installments. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; 1907, c. 994, s. 2; 1917, c.

161; 1919, c. 233; 1919, c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278.)

Cross References. — As to bonds required of State Treasurer, see § 128-8. As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note. — The amendments increased the salary from time to time, the 1949 amendment adding the proviso.

Bond of Clerk Not Official Bond. — A bond by a clerk executed to the State Treasurer individually is not an official bond and does not extend beyond the term during which the clerk was appointed. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672 (1904).

Same—Limitation. — An action against the sureties on the bond of a clerk for defalcations in the office of the State Treasurer is barred after three years. Jackson v. Martin, 136 N. C. 196, 48 S. E. 672 (1904).

§ **147-66. Office and office hours.** — The Treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (1868-9, c. 270, ss. 80, 81; Code, s. 3362; Rev., s. 5369; C. S., s. 7679.)

§ **147-67. Bonds of Treasurer's clerks.**—The clerks in the Treasurer's office shall enter into good and sufficient bonds, payable to the State of North Carolina, as provided in § 128-8. These several bonds shall be in addition and cumulative to the official bond of the State Treasurer, and shall not be construed to affect in any way the liability of the State Treasurer upon his official bond. (Rev., s. 289; 1919, c. 8; C. S., s. 7681; 1921, c. 175.)

§ **147-68. To receive and disburse moneys; to make reports.**—It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; to pay all warrants legally drawn on the Treasurer by the Auditor; and no moneys shall be paid out of the treasury except on the warrant of the Auditor; to report to the Governor annually and to the General Assembly at the beginning of each biennial session thereof the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C. S., s. 7682.)

Cross Reference.—As to funds of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note. — For act authorizing Treasurer to pay certain bonds at exchange rate according to chapter 98 of the Public Laws of 1879, see Session Laws 1947, c. 610.

Duty to Pay Warrants. — As it is the duty of the State Treasurer to keep his accounts, showing the transactions of each fiscal year ending December 31st, he has no right to pay out money except upon proper warrants drawn upon the proper funds in the treasury. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232 (1899).

The Treasurer is not required to pay any and every warrant which the Auditor may sign, but only those which are legally drawn, and the fact that the Auditor finds that a claim for which he issues a warrant on the Treasurer is authorized by law is not binding upon or a protection to the latter. Bank v. Worth, 117 N. C. 146, 23 S E. 160 (1895).

Mandamus for Payment of Warrant. — The State Treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn, and he is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers. Arendell v. Worth, 125 N. C. 111, 34 S. E. 232 (1899).

Same—When Fraud Is Alleged.—Where the State Treasurer denies the correctness of a claim audited by the State Auditor and alleges fraud in the creation of the indebtedness or that the services for which a warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the legislature, and not the courts, to determine. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

Mandamus without Warrant. — Mandamus will not lie to compel the Treasurer to pay a claim where the Auditor has not issued a warrant therefor, as the Treasurer can only pay on such warrant. Burton v. Furnam, 115 N. C. 166, 20 S. E. 443 (1894).

Court Compelling Payment of Claim.—The courts cannot direct the State Treasurer to pay a claim against the State, however just and unquestioned, when there is no legislative appropriation to pay the same; and when there is such an appropriation the coercive power is applied not to compel the payment of the State liability but to compel a public servant to discharge his duty by obedience to a legislative enactment. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

Applied in Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314.

§ 147-69. Deposits of State funds in banks regulated.—Banks having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No bank shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20c) for each check in the amount of not over one thousand dollars ($1,000.00), and for each check for an amount in excess of one thousand dollars ($1,000.00), such banks may charge not over twenty cents (20c) plus one-tenth of one per cent (1%) of the amount of such check in excess of one thousand dollars ($1,000.00). The Commissioner of Banks and the bank examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The payment of interest on deposits of State money in any bank or banks shall be controlled by the Governor and Council of State, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. The interest collected on the bank balances from time to time shall be paid into the State's general fund; but the Treasurer shall credit to the funds of the Agricultural Department all money which is received as interest on the funds of the Department, and he shall notify the Commissioner of Agriculture when such amounts are paid. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C. S., s. 7684; 1931, c. 127, s. 1; 1931, c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183.)

Editor's Note. — The 1933 amendment rewrote the first sentence of the second paragraph. The interest rate on State deposits which was temporarily fixed by the 1931 amendment at 2½% was by the 1933 amendment left to determination of the Governor and Council of State and a corresponding change was made in relation to deposit by the Commissioner of Banks of funds from the liquidation of banks. See 11 N. C. Law Rev. 202.

The 1945 amendment rewrote the fourth sentence of the first paragraph, and the 1949 amendment inserted the proviso thereto. For comment on the 1949 amendment, see 27 N. C. Law Rev. 425.

§ 147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer.—It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State, at any other time, to carefully analyze the amount of cash in the general fund of the State and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State, and to determine in his opinion when the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of State, are hereby authorized and empowered to deposit such excess funds at interest with any official depository of the State upon such terms as may be authorized by applicable laws of the United States and the State of North Carolina, or to invest such excess funds in bonds or certificates of indebtedness or treasury bills of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in certificates of deposit issued by banks or official depositories within the State of North Carolina yielding a return at rates not less than U. S. treasury notes and certificates of indebtedness of comparable maturities. The said funds shall be so invested that in the judgment of the Governor and State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213.)

Editor's Note. — The 1949 amendment rewrote this section.

§ **147-70. To make short-term notes in emergencies.**—Subject to the approval of the Governor and Council of State, the State Treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the General Assembly. (1915, c. 168, s. 3; C. S., s. 7685.)

§ **147-71. May demand and sue for money and property of State.**—The Treasurer is authorized to demand, sue for, collect and receive all money and property of the State not held by some person under authority of law. (1866, c. 46; Code, s. 3359; Rev., s. 5375; C. S., s. 7688.)

§ **147-72. Ex officio treasurer of State institutions; duties as such.**—The Treasurer shall be ex officio the treasurer of the Department of Agriculture, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and

Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c, 128; 1881, c. 211, s. 9; 1883, c. 156, s. 12; 1883, c. 405; Code, ss. 2235, 2251, 3723; 1895, c. 434; 1899, c. 1, s. 11; Rev., s. 5376; 1919, c. 314, s. 6; C. S., s. 7689; 1947, c. 781.)

Editor's Note. — The 1947 amendment struck out "soldiers home" from the list of institutions in the first sentence.

§ **147-73. Office of treasurer of each State institution abolished.**—The office of treasurer of each of the several State institutions of which the State Treasurer is ex officio treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ **147-74. Office of State Treasurer declared office of deposit and disbursement.**—The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ **147-75. May authorize chief clerk to act for him; Treasurer liable.**—The Treasurer may authorize his chief clerk to perform any duties pertaining to the office, except signing checks; but the Treasurer is responsible for the conduct of all his clerks. (1868-9, c. 270, s. 76; Code, s. 3358; Rev., s. 5377; C. S., s. 7690.)

§ **147-76. Liability for false entries in his books.**—If the Treasurer af the State shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as Treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the Governor, the General Assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the Auditor, with intent, in any of said instances, to defraud the State or any person, such Treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years. (R. C., c. 34, s. 68; Code, s. 1119; Rev., s. 3606; C. S., s. 7691.)

§ **147-77. Daily deposit of funds to credit of Treasurer.**—All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State, or any agency, department, division or commission thereof, except officers and the clerk of the Supreme Court, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days' trial. (1925, c. 128, s. 1; 1945, c. 159.)

Editor's Note. — The 1945 amendment struck out the words "or other designated depository" formerly appearing after "trust company" near the middle of the section.

§ **147-78. Treasurer to select depositories; bond.**—The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State, and the said Treasurer shall require of such depository a bond, or in lieu thereof collateral security for such deposit, consisting of such bonds as are approved for investment by the State sinking fund, as provided for in §§ 142-31 to 142-43, payable to the State of North Carolina, in a sufficient amount to protect the State on account of any deposit of State funds made therein. (1925, c. 128, s. 2.)

§ **147-79. Deposits of State funds in banks that have provided for safety of deposits without requiring depository bonds.**—Where any bank or trust company, State or national, has come within the provisions of the national banking laws, providing guarantee or insurance on security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the State of North Carolina, or of any county, city, town, or other political subdivision of the State of North Carolina, it shall be permissible and lawful to deposit the moneys of the State, or of such county, city, town or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand, as now required by law: Provided, however, that the Council of State shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the State of North Carolina must be given by the Council of State, and approval by the Local Government Commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the State: Provided further, that any action in regard to these matters shall be discretionary with the Council of State as far as this section applies to them, and with the Local Government Commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

Editor's Note. — See 11 N. C. Law Rev. 201, for review of this section.

§ **147-80. Deposit in other banks unlawful; liability.**—It shall be unlawful for any funds of the State to be deposited by any person, institution, or department or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court, and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six per cent per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3.)

§ **147-81. Number of depositories; contract.**—The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such Treasurer and the Governor. (1925, c. 128, s. 4.)

§ **147-82. Accounts of funds kept separate.**—In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by State departments, institutions, commissions, and other agencies or divisions of the State which collect or receive funds belonging to the State, or funds handled or maintained as trust funds in any form by such department, division or institution shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ **147-83. Receipts from federal government and gifts not affected.**—Sections 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said sections shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

§ **147-84. Auditor to furnish forms; reports; refund of excess payments.**—The State Auditor, by and with the advice, consent and approval of the Governor, shall prescribe and furnish all forms necessary for full compliance with §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and the cost of printing and furnishing the same shall be charged in the printing account of the several departments, institutions and agencies receiving and using such forms; and such daily reports shall be made by mail by those departments, institutions and collecting agencies and officers and employees who are not in the city of Raleigh, when required to make such daily deposits and reports; and, in addition to such daily reports, the Treasurer may require a report, as to the amount deposited, by wire, and all such departments, institutions, agencies, officers and employees, who are at or in the city of Raleigh, when required to make such deposits and reports, shall deliver the same, in person or by messenger, to the State Treasurer; whenever taxes of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount found to be legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate from the head of the department through which said tax was collected, or his successor in the performance of the functions of that department, and the Treasurer shall pay said warrant. (1925, c. 128, s. 7.)

§ **147-85. Fiscal year.**—The fiscal year of the State government shall annually close on the thirtieth day of June. The accounts of the Treasurer, the Auditor and the charitable and penal institutions of the State shall be annually closed on that date. (1868-9, c. 270, s. 77; 1883, c. 60; Code, s. 3360; 1885, c. 334; 1905, c. 430; Rev., s. 5378; C. S., s. 7692; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21.)

Editor's Note. — Prior to the 1921 amendment the fiscal year closed on the thirtieth day of November. By the 1925 amendment a sentence providing for examination of the accounts of the Treasurer, Auditor and Insurance Commissioner by a commissioner appointed by the legislature, was deleted.

Applied, as fixing salary of sheriff, in Martin v. Swain County, 201 N. C. 68, 158 S. E. 843 (1931).

§ **147-86. Additional clerical assistance authorized; compensation and duties.**—The State Treasurer, by and with the consent and advice of the Governor and Council of State, is authorized to employ an additional clerk in the Treasury Department, whose compensation and duties shall be fixed by the State Treasurer, by and with the consent and advice of the Governor and Council of State. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C. S., s. 7693(a).)

Article 7.

Commissioner of Revenue.

§ **147-87. Commissioner of Revenue; appointment; salary.**—A Commissioner of Revenue shall be appointed by the Governor on January 1, 1933, and quadrennially thereafter. The term of office of the Commissioner shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the Governor, with the approval of the Advisory Budget Commission. (1921, c. 40, ss. 2, 6; 1929, c. 232.)

§ **147-88. Duties as to revenue laws.**—In addition to the other duties of the Commissioner of Revenue, it shall be his duty to prepare for the legislative committees of the General Assembly such revision of the revenue laws of the State as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first ten days of the session. (1921, c. 40, s. 5.)

Article 8.

Solicitors.

§ **147-89. To prosecute cases removed to federal courts.**—It shall be the duty of the solicitors of this State, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this State, and have moved their cases from the State to the federal courts under the provisions of the various acts of Congress on such subjects. (1874-5, c. 164, s. 1; Code, s. 1239; Rev., s. 5381; C. S., s. 7696.)

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Article 1.

Administration by Highway and Public Works Commission.

§ **148-1. Commission to employ servants and agents.**—The State Highway and Public Works Commission may employ a director and such supervisors, inspectors, superintendents, wardens, physicians, overseers, guards, and other servants and agents as it may deem necessary for the management of the affairs of the State prison system and the safekeeping and employment of the prisoners therein confined. The compensation and duties of these employees shall be fixed under the provisions of the Budget Act and the Personnel Act. The Commission may discharge the director with the consent and approval of the Governor, and may discharge any other servants or agents at will. (1901, c. 472, s. 3; Rev., s. 5388; C. S., s. 7703; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409.)

Editor's Note. — Public Laws 1933, c. 172, §§ 2, 18, created the State Highway and Public Works Commission and conferred upon it all the powers and duties formerly exercised by the State Prison Department. And section 18 of said chapter further provided for the substitution of the terms "Highway and Public Works Commission," etc. for "Prison Department," etc., throughout this chapter.

The 1943 amendment rewrote this section.

§ **148-2. Employees' bonds; money paid to State Treasurer.**—The State Highway and Public Works Commission shall require its officers, employees, or agents, who may be authorized by law, or hereafter authorized by the Commission, to collect or receive the moneys and earnings of the State prison, to enter into bonds payable to the State of North Carolina in such penal sums and with such security as may be approved by the Commission, conditioned upon the faithful performance of their duties in collecting and receiving, and paying over the moneys and earnings of the prison. Only such corporate security shall be accepted as is with sureties licensed to do business in North Carolina. (1901, c. 472, s. 7; Rev., s. 5389; C. S., s. 7704; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18.)

§ **148-3. Acquisition and alienation of property.**—Whenever it may be necessary or convenient in the operation of the State prison system, or whenever expressly authorized by law, such property, both real and personal, as may be deemed necessary by the State Highway and Public Works Commission may be acquired by gift, devise, purchase, or lease; and whenever it may be necessary or convenient in the opinion of the State Highway and Public Works Commission, the Commission may dispose of any such property, either real or personal, or any interest or estate therein, but all sales of real property shall be subject to the approval of the Governor and Council of State and deeds shall be executed in accordance with the provisions of §§ 143-147 to 143-150. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C. S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409.)

Editor's Note. — The 1943 amendment rewrote this section.

§ **148-4. Management of convicts and prison property; recapture of escaped convicts.**—The Commission shall have control and custody of all prisoners serving sentence in the State Prison or in State prison camps, and such prisoners shall be subject to all the rules and regulations legally adopted by the Commission. The authorized agents of the Commission shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. The Commission shall manage and have charge of all the property and effects of the State prison, and conduct all its affairs subject to the provisions of this chapter. It may adopt and enforce such rules and regulations for the government of the State prison, its agents and employees and the convicts therein confined as to them may seem just and proper. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409.)

Editor's Note. — The 1943 amendment inserted the word "and" between the words "require" and "for" in the second sentence.

§ **148-5. Commission to have control over prison property.**—The State Highway and Public Works Commission shall have control and custody of all State highway prison camps, together with all property of every kind assigned thereto, the central prison at Raleigh, and all State prison farms, camps and other places for detention and employment of prisoners, together with all property of every kind and description, and all books, accounts, and records of such establishments. (1933, c. 172, s. 4.)

§ **148-6. Custody, employment and hiring out of convicts.**—The State Highway and Public Works Commission shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Commission shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Commission: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C. S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18.)

Editor's Note.—By the 1925 amendment the provision for work on any property owned by the State replaced a provision for work on property owned by the State Prison. And a former provision restricting prisoners to be hired out to those not necessary to be detained in the prison near Raleigh was deleted by the amendment.

§ **148-7. Inspection of mines.**—The State Highway and Public Works Commission is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which State convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2.)

§ **148-8. Automobile license tags to be manufactured by Commission.**—The State Highway and Public Works Commission is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the Commission may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Highway and Public Works Commission for the State automobile license tag requirements from year to year.

The price to be paid to the State Highway and Public Works Commission for such tags shall be fixed and agreed upon by the Governor, the State Highway and Public Works Commission, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36.)

§ **148-9. State Board of Charities and Public Welfare to supervise prison.**—The State Board of Charities and Public Welfare shall exercise a supervision over the State prison as contemplated by the Constitution, under proper rules and regulations, to be prescribed by the Governor. (1925, c. 163; 1933, c. 172.)

§ **148-10. Board of Health to supervise sanitary and health conditions of prisoners.**—The State Board of Health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the Division of Prisons, and shall make periodic examinations of the same and report to the State Highway and Public Works Commission the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C. S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409.)

Editor's Note. — The 1943 amendment struck out the former last sentence which provided: "The Commission shall do such things as may be necessary to carry out the recommendations of the Board of Health."

Article 2.

Prison Regulations.

§ **148-11. State Highway and Public Works Commission to make regulations.**—The State Highway and Public Works Commission may adopt such rules and regulations for enforcing discipline as their judgment may indicate, not inconsistent with the Constitution and laws of the State. They shall print and post these regulations in the cells of the convicts, and the same shall be read to every convict in the State prison when received. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18.)

Editor's Note. — This section was re-enacted without material change by the 1925 amendment.

This section is constitutional. State v. Revis, 193 N. C. 192, 136 S. E. 346, 50 A. L. R. 98 (1927); State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713 (1949).

Immunity of Prison Official from Prosecution.—The fact that disciplinary punishment inflicted on a prisoner by a prison official is administered in accordance with the rules and regulations of the State Highway and Public Works Commission does not render the prison official immune to prosecution for assault unless the particular regulation relied on is within the statutory authority of the Commission. State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713 (1949).

§ **148-12. Record of conduct of prisoners.**—The Director of the State prison system and the superintendents of county chain gangs or road forces, under rules and regulations of the State Highway and Public Works Commission, shall keep a record of the conduct and demeanor of all prisoners held in the State prison system and on county chain gangs. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18.)

§ **148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.** — The State Highway and Public Works Commission may, with the approval of the Governor, make rules and regulations relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their disharge or parole.

Uniforms of stripes to designate felons may be used by the prison authorities of the Commission as a matter of discipline only; and prisoners, even though convicted of felony, need not be clothed in such stripes except as a form of discipline for violation of prison rules. No person not convicted of a felony shall be required to wear a uniform of stripes such as is usuallly used to designate felons. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409.)

Editor's Note. — The 1943 amendment struck out at the end of the first paragraph the words "and until such rules are so made by the Commission, the regulations set out in §§ 148-14 to 148-16 and 148-18 shall govern these matters."

§§ **148-14 to 148-17:** Repealed by Session Laws 1943, c. 409.

§ **148-18. Money and other allowances for prisoners discharged; certificates of competency.**—All prisoners upon being discharged, except short-term prisoners convicted of misdemeanors, paroled or pardoned from prison, shall be given a small sum of money, transportation to the place in North Carolina designated in parole or discharge papers, and sufficient clothing for neat and comfortable appearance. If any prisoner demonstrated during his prison service that he is competent or proficient in any gainful trade, he shall also be given upon his discharge, parole, or pardon a certificate of competency in such trade signed by the proper prison authorities. (1935, c. 414, s. 19.)

§ **148-19. Prisoners examined for assignment to work.**—Each prisoner committed to the charge of the State Highway and Public Works Commission shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to labor and the work he is required to do shall be dependent upon the report of said physician as to his physical and mental capacity. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18.)

§ **148-20. Whipping or flogging prisoners.**—It is unlawful for the State Highway and Public Works Commission to whip or flog, or have whipped or flogged, any prisoner committed to their charge until twenty-four hours after the report of the offense or disobedience, and only then in the presence of the prison physician or prison chaplain; and no prisoner other than those of the third class as defined in this article shall be whipped or flogged at any time. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18.)

Cross Reference. — As to control of county convicts, see § 153-196.

Editor's Note. — Prior to the enactment of this section, it was held that there was no law which allowed flogging of convicts to enforce discipline, and that its infliction was contrary to law. State v. Nipper, 166 N. C. 272, 81 S. E. 164 (1914).

Constitutionality.—Where a public-local law provides for whipping to be administered to convicts sentenced to work upon the roads as an extreme necessary means to enforce discipline, safeguarded in respect to its being humanely administered after due notice to the offender, under proper rules and regulations, with report to the commissioners of the county to which the local law applies, making it a misdemeanor for the one designated to do so brutally or without mercy: Held, the statute is not inhibited by any provision of our Constitution and is a valid enactment. Constitution, Art. XI, § 1. State v. Revis, 193 N. C. 192, 136 S. E. 346 (1927).

Excessive Punishment.—Where a guard is charged with an assault upon a convict, and it is shown that his superior officer instructed him to take the convict over the hill away from the rest of the prisoners and give him five or six licks for refractory conduct; but that the guard used a leather strap 2½ inches wide, 2½ feet long, and ¼ inch thick, upon the prisoner's bare back, with other prisoners holding his head, legs, and feet, in the presence of the "whole crowd," and administered "fifteen or twenty licks," it is held that the guard exceeded his authority, and the punishment inflicted was excessive and unnecessarily humiliating. State v. Mincher, 172 N. C. 895, 90 S. E. 429 (1916).

Quoted in State v. Carpenter, 231 N. C. 229, 56 S. E. (2d) 713 (1949).

§ **148-21. Prisoner's supplies and clothes to be marked.**—The prisoner's number shall be used for marking all clothes, bedclothing, beds, and other supplies used by prisoners, so that when such clothes, bedclothing, and supplies are washed and cleaned they shall be always returned for the use of the same prisoner. (1917, c. 286, s. 9; C. S., s. 7729; 1925, c. 163.)

§ **148-22. Recreation and instruction of prisoners.**—The State Highway and Public Works Commission shall arrange certain forms of recreation for the prisoners, and arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, to attend lectures, and to take part in other forms of amusement that may be provided by the Commission. The Commission shall organize classes among the prisoners so that those who desire may receive instruction in various lines of educational pursuits. They shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes; such services, however, shall be voluntary on the part of the prisoner. This section shall apply to the State prison and to the State farms and State camps. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18.)

§ **148-23. Prison employees not to use intoxicants or profanity.**—No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the State Highway and Public Works Commission, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of intoxicating liquors, shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Highway and Public Works Commission who curses a prisoner under his charge shall at once cease to be an employee and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C. S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18.)

§ **148-24. Religious services; Sunday school.**—The State Highway and Public Works Commission shall make such arrangements as are necessary to hold religious services for the prisoners in the State prison and in the State farms and camps, on Sunday and at such other times as may be deemed wise. Attendance of the prisoners at such religious services shall be voluntary. The Commission shall if possible secure the visits of some minister at the hospital to administer to the spiritual wants of the sick. In order to provide religious worship for the prisoners confined in the State prison, known as the Caledonia Farm, the Commission shall employ a resident minister of the gospel and provide for his residence and support. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; 1925, c. 275, s. 6; 1933, c. 172, s. 18.)

§ **148-25. Commission to investigate death of convicts.**—The State Highway and Public Works Commission, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Commission may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18.)

Article 3.

Labor of Prisoners.

§ **148-26. Intent of State to maintain public roads with prison labor.**—It is hereby declared to be the public policy of this State to build and maintain a State system of dependable highways and to maintain and improve the public roads in the several counties at the State's expense; and to that end to make the most economical use of the prison labor of the State in the construction, improvement and maintenance of said highways and roads.

It is further declared to be the intent and purpose of this chapter to provide for the gainful employment of all able-bodied prisoners of the State; and to this end the Highway and Public Works Commission is directed to provide for the employment in the maintenance and construction of the public roads of the State of as many of the male prisoners as, under the terms of their sentences, may be thus employed and are physically fit for such work, and as the Commission can arrange economically to use for such purpose, and the remainder of the inmates of such prison division shall be employed as far as practicable, with due regard to their physical condition, in agriculture, prison industries, and forestry work, giving preference to the production of food supplies and necessary articles of use in the State Highway Department and other State supported institutions or activities, and the development and improvement of State owned properties. (1933, c. 172, ss. 1, 14.)

Editor's Note. — For review of this section and those following, see 11 N. C. Law Rev. 252.

§ 148-27. Women prisoners; limitations on labor of prisoners.—The State Highway and Public Works Commission may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the State Highway and Public Works Commission whose term of imprisonment is less than six months, or who is under eighteen years of age. (1931, c. 145, s. 32; 1933, c. 39; 1933, c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409.)

Editor's Note. — The 1935 amendment rewrote this section.

The 1943 amendment transferred from the end of this section to the end of § 148-30 the following language: "No male person shall be so assigned whose term of imprisonment is less than thirty days." It also struck out the following proviso: "Provided, that in criminal actions in which a justice of the peace has final jurisdiction, no county shall be liable for or taxed with any costs."

§ 148-28. Sentencing of prisoners to central prison.—The several judges of the superior courts of this State are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offense or the character or condition of the defendant makes it advisable to do so, to sentence such person to the central prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the central prison. (1933, c. 172, s. 7.)

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.—The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the Auditor as true copies of those on file in his office. The State is not liable for the expenses of maintaining convicts until they have been received by the State Highway and Public Works Commission authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18.)

Expense of Conveying. — This section only applies to expense of maintenance and does not apply to expense of conveying convicts to the penitentiary. By the acts of 1869-70 it was especially provided that the expense of conveying should be paid by the State and this section did not repeal that act. Taylor v. Adams, 66 N C. 338 (1872).

§ 148-30. Sentencing to public roads.—In all cases not provided for in §§ 148-28 and 148-32, the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Highway and Public Works Commission, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the Commission as he may be advised by them is the proper person to receive such notice. Whereupon, the Commission shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the Commission shall designate: Provided, however, the Commission shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male person shall be so assigned whose term of imprisonment is less than thirty days. (1933, c. 172, s. 8; 1943, c. 409.)

Editor's Note. — The 1943 amendment added the last sentence.

§ **148-31. Maintenance of central prison; warden; powers and duties.**—The central prison shall be maintained in such a manner as to conform to all the requirements of article 11 of the State Constitution, relating to a State's prison. A suitable person shall be appointed warden of the central prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the State's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this article. (1933, c. 172, s. 14.)

§ **148-32. Prisoners may be sentenced to work on city and county properties; Commission may provide prisoners for county.**—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the State Highway and Public Works Commission, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The Commission may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the Division of Prisons. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243.)

§ **148-33. Prison labor furnished other State agencies.**—The State Highway and Public Works Commission may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Commission and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Commission. (1933, c. 172, s. 30.)

§ **148-34. Establishment of prison districts and camps.**—There shall be established in this State by the State Highway and Public Works Commission such number of prison districts as it shall determine advisable. The State Highway and Public Works Commission shall, as soon thereafter as practicable, locate the prison camp or camps in each of said districts. Until such time as it shall be feasible for the Commission to build and construct prison camps in accordance with the provisions of this article, it shall be the duty of the Commission to take over and acquire by contract such county or road district prison camps as in their opinion shall be necessary for the use of the county prisoners on the public roads of the several county road systems as hereafter provided. The State Highway and Public Works Commission, in lieu of locating and constructing prison camps in any of the districts, may acquire by contract and take over prison camps in any county or road district and may make such alterations and additions thereto as shall be necessary to render the same suitable for a district prison camp. (1931, c. 145, s. 26; 1933, c. 172, s. 17; 1943, c. 409.)

Editor's Note.—Prior to the 1943 amendment the duties required of the Commission were to be performed with the approval of the Governor, and the prison districts were limited to "not less than five."

§ **148-35. Plans and specifications for original prison camps.**—All district prison camps authorized by § 148-34, and all additions made to county camps taken over by the State Highway and Public Works Commission as authorized by § 148-34, shall be constructed, altered or changed, under plans and specifications prepared by the Commission. The construction, alterations or changes shall be done by the Highway and Public Works Commission and, as far as shall be practicable, prisoners shall be used to do the work. (1931, c. 145, s. 27; 1933, c. 172, s. 17; 1943, c. 409.)

Editor's Note. — The 1943 amendment struck out at the end of the first sentence the words "with the approval of the Governor, the State Board of Health, and the State Board of Charities and Public Welfare."

§ **148-36. Highway and Public Works Commission to control camps.**—The district prison camps and all county prison camps acquired by the State Highway and Public Works Commission in lieu of district prison camps shall be under the control and direction of the Commission, and operated under rules and regulations to be made by the Commission, and approved by the Governor, and subject to such rules and regulations so adopted and approved, the Commission shall establish grades for prisoners according to conduct, and so far as possible introduce the honor system, and may transfer honor prisoners to honor camps. Prisoners may be transferred from one district camp to another, and the State Highway and Public Works Commission may where it is deemed practical to do so establish separate camps for white prisoners and colored prisoners. In each district camp quarters shall be provided for the care and maintenance of such prisoners as may be sick, and a physician may be employed for such portion of his time as may be necessary and assigned to each of the several camps, and such of the prisoners as may be chosen may be used as attendants or nurses notwithstanding that such prisoners may not have qualified for such work as may be required by law; and any such prisoners as may have special qualifications to perform labor other than labor upon the public roads may be assigned to such special duties as the Commission may determine. All necessary directors, physicians, guards or supervisors, or any other necessary employees for the proper care, keep and handling of such prisoners, shall be employed by the Commission and serve at the pleasure of the Commission. (1931, c. 145, s. 28; 1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4; 1933, c. 172, ss. 4, 17; 1943, c. 409.)

Editor's Note. — The 1943 amendment struck out the words "and the State Board of Charities and Public Welfare" formerly appearing after the word "Governor" in the first sentence. The amendment also struck out the words "by and with the consent and approval of the Governor and the Division of Personnel of the Budget Bureau" formerly appearing after the words "by the Commission" in the last sentence.

§ **148-37. Additional prison camps authorized.**—The Commission may establish such additional camps as are necessary for use by the Division of Prisons, such camps to be either of a permanent type of construction, or of temporary or movable type as the Commission may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the State as to render their employment most economical and profitable, the Commission to be the sole judges of the type and character of such buildings without the control of any other department. For this purpose, the Commission may purchase or lease camp sites and suitable lands adjacent thereto and erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the Budget Bureau for this purpose. (1933, c. 172, s. 19.)

§ **148-38. Employment of prisoners assigned to camps.**—All able-bodied prisoners committed or assigned to the district prison camps shall be employed in the maintenance and construction of roads in the public road system of the several counties, or upon the State highway system, or assigned to such special duty in connection with the prison camps, or the preparation and repair of all road equipment and supplies as the State Highway and Public Works Commission may determine. (1931, c. 145, s. 29; 1933, c. 172, s. 17.)

§ **148-39. Cost of keeping prisoners borne by State Highway and Public Works Commission.**—The cost and expense of construction of the various prison camps, the care, transportation and maintenance of prisoners and their guarding and supervision shall be paid by the State Highway and Public Works Commission from the county road maintenance funds provided in the Budget Appropriations Act: Provided, however, when prisoners are used upon the State highway systems in construction or maintenance, the cost and expense of transportation and maintenance of such prisoners, their guarding and supervision, shall be paid from the funds appropriated for the maintenance of State highways. (1931, c. 145, s. 33; 1933, c. 172, s. 17.)

§ **148-40. Recapture of escaped prisoners.**—State Highway and Public Works Commission may, in the rules and regulations to be adopted by it, provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or highway prison camps, or county road camps of this State, and may pay such reward or expense of recapture as the Commission may by regulation provide to any person making the same. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the Division of Prisons. (1933, c. 172, s. 21.)

Cited in State v. Payne, 213 N. C. 719, 197 S. E. 573 (1938).

§ **148-41. Recapture of escaping prisoners; reward; punishment for escape.**—The State Highway and Public Works Commission shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Commission shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem advisable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Highway and Public Works Commission and accounted for as a part of the expense of maintaining the State's prisons.

If a prisoner of Class A or Class B attempts to escape or leaves the State prison or any State farm or State camp without permission, he shall, upon being recaptured, be reduced to Class C and shall permanently lose all his accumulated time and money. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c.

236; 1917, c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409.)

Editor's Note. — Prior to the 1943 amendment the last sentence of the first paragraph read: "Such reward earned shall be paid by the Treasurer of the State on the warrant of the Governor and charged to the State Highway and Public Works Commission, and by the Commission shall be repaid to the State Treasurer, and accounted for as a part of the expense of maintaining the State's prisoners."

§ 148-42. Indeterminate sentences.—The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the Commission is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoner's conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior which his conduct may justify. (1933, c. 172, s. 24.)

§ 148-43. Prisoners of different races kept separate. — White and colored prisoners shall not be confined or shackled together in the same room of any building or tent, either in the State prison or at any State or county convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable. Any officer or employee of either the State or any county in the State having charge of convicts or prisoners who shall violate or permit the violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 832, ss. 1, 2; 1917, c. 286, s. 24; C. S., s. 7740; 1925, c. 163.)

Cross Reference. — As to subsequent statute on this subject, see § 148-44.

§ 148-44. Segregation as to race, sex and age.—The Commission shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and shall provide for segregation of youthful offenders as required by §§ 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2.)

Cross References.—As to segregation of youthful offenders generally, see §§ 15-210 through 15-216. As to prison camp for such offenders, see §§ 148-49.1 through 148-49.5.

Editor's Note. — The 1947 amendment rewrote the provision as to youthful offenders.

§ 148-45. Penalty for escaping or assisting escape.—Any prisoner who escapes or attempts to escape, or in any manner connives, aids or assists in helping other prisoners to escape or attempt to escape shall be guilty of a misdemeanor, and upon conviction shall be imprisoned at the discretion of the court, such term of imprisonment to commence at the termination of the sentence being served at the time of the offense, and such offending prisoner shall likewise forfeit all gained time that he has earned by previous good conduct. (1933, c. 172, s. 26.)

§ 148-46. Degree of protection against violence allowed.—When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape. (1933, c. 172, s. 27.)

§ 148-47. Disposition of child born of female prisoner.—Any child born of a female convict while she is in custody shall upon the arrival of a suitable age be surrendered to the clerk of the Superior Court of Wake County for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. (1933, c. 172, s. 28.)

§ **148-48. Parole powers of Governor unaffected.**—Nothing in this chapter shall be construed to limit or restrict the power of the Governor to parole prisoners under such conditions as he may himself impose or prevent the reimprisonment of such prisoners upon the violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29.)

§ **148-49. Prison indebtedness not assumed by Commission.** — The State Highway and Public Works Commission shall not assume or pay off any part of the deficit of the State prison existing on March 22, 1933. (1933, c. 172, s. 33.)

ARTICLE 3A.

Prison Camp for Youthful and First Term Offenders.

§ **148-49.1. Conversion of "Prisoners of War" Camp at Camp Butner into prison camp for youthful and first term offenders.**—The State Hospitals Board of Control is authorized and empowered to convert the old "Prisoners of War" Camp located on its property at Camp Butner into a modern prison camp or guardhouse with a capacity of one hundred (100) for the purpose of receiving and detaining such youthful and first term prisoners as may be sent it by the State Highway and Public Works Commission under such rules and regulations as may be jointly adopted by the State Highway and Public Works Commission and the North Carolina Hospitals Board of Control. Should the North Carolina Hospitals Board of Control find it more practicable to establish the prison camp or guardhouse on some other property owned by the State at Butner, then, and in such event, such prison camp or guardhouse may be constructed at such other location on property owned by the State at Butner. (1949, c. 297, s. 1; 1951, c. 250.)

Cross Reference.—As to segregation of youthful offenders generally, see §§ 15-210 through 15-216.

Editor's Note. — The 1951 amendment added the last sentence.

§ **148-49.2. "Youthful offender" and "first term offender" defined.**—For the purposes of this article a "youthful offender" and a "first term offender" is a person (1) who, at the time of imposition of sentence, is less than 25 years of age, and (2) who has not previously served a term in any jail or prison. (1949, c. 297, s. 2.)

§ **148-49.3. Employment and supervision of prisoners.**—Prisoners received at Camp Butner Prison shall be employed in work on the farm, workshops, the upkeep and maintenance of the property located at Camp Butner or in such other similar work as may be determined by the State Hospitals Board of Control and the State Highway and Public Works Commission. The said prisoners to be under the general supervision of the agents and employees of the State Highway and Public Works Commission or of such employees of the State Hospitals Board of Control as may be agreed upon by the two State agencies. (1949, c. 297, s. 3.)

§ **148-49.4. Expenses incident to conversion of Camp and maintenance of prisoners.**—All expenses incident to the conversion of the old "Prisoners of War" Camp shall be borne by the State Hospitals Board of Control and paid out of the proceeds from the sale of surplus property owned by said Board and located at Camp Butner. Said prison camp or guardhouse to fully meet the requirements of the State Highway and Public Works Commission as to construction, plans and specifications. The cost of the maintenance of prisoners assigned to said prison shall be borne by the State Hospitals Board of Control. (1949, c. 297, s. 4.)

§ **148-49.5. Adoption of rules and regulations.**—As soon as practicable the State Hospitals Board of Control and the State Highway and Public Works Commission shall jointly adopt such rules and regulations as they may deem necessary to fully carry out the intents and purposes of this article. (1949, c. 297, s. 5.)

Article 4.

Paroles.

§ **148-50. Advisory Board of Paroles created; term of office; vacancy appointments.**—The Governor of North Carolina is hereby authorized and empowered to name an Advisory Board of Paroles of six members, consisting of the Attorney General, the chairman of the State Highway and Public Works Commission, the Superintendent of public welfare, and three others, who are not State office holders and who are not connected officially with the State Highway and Public Works Commission, to be selected by the Governor and to serve for the term of his appointment, and to perform such duties in the State prison program as may be assigned to them by the Governor. The members of the Board, other than ex officio members, shall be appointed as follows: One for a term of one year, one for a term of two years, and one for a term of three years. Appointments to fill any and all vacancies shall be made by the Governor. (1935, c. 414, s. 1.)

§ **148-51. Board meetings; quorum; chairman and secretary; pay of members.**—The Board shall meet at the call of the Governor at times and places designated by him. At said meetings three members shall constitute a quorum. The Governor shall be chairman and the Commissioner of paroles shall be secretary of the Board. The Governor and other ex officio members may designate some other person to act for them at the meetings of the Board. The members of the Board, other than the ex officio members, shall receive as compensation the sum of seven dollars per day and actual expenses while attending the meetings of the Board, or while performing such other duties as may be assigned to them by the Governor: Provided, however, the compensation may be raised to the sum of ten dollars per day by the Governor at his discretion. (1935, c. 414, s. 1.)

§ **148-52. Commissioner of Paroles; assistants.**—The Governor of North Carolina is authorized and empowered to appoint a Commissioner of Paroles and one or more assistants to said Commissioner as he may deem wise and expedient, who shall, under the Governor's direction, aid the Governor in more fully performing all of the duties required of him in the exercise of the powers contemplated herein, and to perform such other services as may be assigned by the Governor. The Parole Commissioner shall be provided with reasonable clerical assistance, whose compensation shall be fixed in accordance with the provisions of § 148-55. The salary of the Parole Commissioner shall be fixed by the Governor. (1935, c. 414, s. 2; 1939, c. 335.)

§ **148-53. Investigators and investigations of cases of prisoners, prisons and prison camps.**—For the purpose of investigating the cases of all prisoners serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms, the Governor is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the Governor's direction, investigate all cases designated by him, and otherwise aid the Governor in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair and just consideration. The Governor may cause an investigation to be made by the said investigators of any prison, prison camp, prison farm, and/or any penal and correctional institution in the State when, in his judgment, the situation warrants an investigation. Each and every investigator provided for herein shall perform his duties under the sole direction of the Governor. (1935, c. 414, s. 3.)

§ **148-54. Parole supervisors provided for; duties.**—The Governor is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the Governor and under regulations prescriped by him exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Governor, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the Governor may require. The number of supervisors may be increased by the Governor as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4.)

§ **148-55. Pay and expenses of assistants, investigators and supervisors.**—The salaries and expense allowances of all personnel appointed under §§ 148-52 to 148-54 shall be fixed by the Governor with the approval of the Advisory Budget Commission, and all such salaries and expenses, other than that of the Parole Commissioner, shall be paid by the State Highway and Public Works Commission upon vouchers approved by the Commissioner of Paroles. (1935, c. 414, s. 5.)

§ **148-56. Preparation of case histories for Commissioner of Paroles.**—The Governor is authorized and empowered to direct any employees of the State Department of Public Welfare, and of the State Highway and Public Works Commission, and any county superintendent of public welfare, and any member of the staff investigators provided for in this article to prepare and submit to the Commissioner of paroles case histories or other information in connection with any case under consideration for parole, such work to be done without extra compensation, and such work shall be considered as a part of the regular duties of such employees or superintendents of welfare. (1935, c. 414, s. 6.)

§ **148-57. Rules and regulations for parole applications.**—The Governor of North Carolina is hereby authorized and empowered to set up and establish rules and regulations, in accordance with which applications for paroles may be heard and by which such proceedings may be initiated and heard. (1935, c. 414, s. 7.)

§ **148-58. Time of eligibility of prisoners for hearing on applications.**—All prisoners shall be eligible for a hearing on application for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate: Provided, that any prisoner serving a sentence for life shall be eligible for such hearing when he has served ten years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner, but shall be construed only as guaranteeing to every prisoner a hearing of his case upon its merits. (1935, c. 414, s. 8.)

§ **148-59. Duties of clerks of all courts as to commitments; statements filed with Commissioner of Paroles.**—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Governor shall by regulations prescribe, which information shall contain, among other things, the following: (1) The court in which the prisoner was tried; (2) the name of the prisoner and of all co-defendants; (3) the date or term when the prisoner was tried; (4) the offense with which the prisoner was charged and the offense for which convicted; (5) the judgment of the court and the date of the beginning of the sentence; (6) the name and address of the presiding judge; (7) the name and address of the prosecuting solicitor; (8) the name and address of private prosecuting attorney, if any; (9) the name and address of the arresting officer; and (10) all available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Commissioner of Paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Highway and Public Works Commission without charge. (1935, c. 414, s. 9.)

§ **148-60. Time for release of prisoners discretionary.**—The time of releasing each prisoner eligible for consideration for parole as provided for herein shall be discretionary, and due consideration shall be given to the reasonable probability that the prisoner will live and remain in liberty without violating the law; that the release of the prisoner is not incompatible with the welfare of society, and that the record of the prisoner during his confinement established that the prisoner is obedient to prison rules and regulations, and has shown the proper respect for prison officials, and due regard and consideration for his fellow prisoners; and that the prisoner harbors no resentment against society or the judge, prosecuting attorneys, or jury that convicted the prisoner. (1935, c. 414, s. 10.)

§ **148-61. Contents of release order.**—When a prisoner is released on parole, the parole instrument shall specify in writing the conditions of the parole, the place of residence of the parolee, within or without the State, the name and address of the party to whom the parolee is to report, and times and places when and where the said parolee shall report to the said party during the entire period of the parole. (1935, c. 414, s. 11.)

§ **148-61.1. Revocation of parole by Governor; conditional or temporary revocation.**—The Governor may at any time, in his discretion, revoke the order of parole of any parolee. If any parolee shall have his parole revoked, he shall thereafter be returned to the penal institution having custodial jurisdiction over him, and the time such parolee was at liberty on parole shall not be counted as any portion of or part of the time served on his sentence. The Governor may, in his discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or officers or parole officers. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time, during which the Commissioner of Paroles shall determine whether or not the conditions of said parole have been violated. If it is determined by the Commissioner of Paroles that the conditions of said parole have been violated, the Commissioner of Paroles shall recommend to the Governor his findings on the matter. If it should be determined by the Commissioner of Paroles that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be discharged upon his original parole. (1951, c. 947, s. 1.)

§ **148-62. Discretionary revocation of parole upon conviction of crime.**—If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the Governor and at such time as the Governor may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the Governor, to serve the remainder of the first or original sentence upon which his parole was granted, after the completion or termination of the sentence for said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The Governor, however, may, in his discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. (1935, c. 414, s. 12; 1951, c. 947, s. 2.)

Editor's Note. — The 1951 amendment rewrote this section. Prior to the amendment the section provided for automatic revocation of parole upon conviction of crime.

§ **148-63. Arrest powers of police officers.** — Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked. (1935, c. 414, s. 13.)

§ **148-64. Co-operation of prison officials; information to be furnished.**—The warden of each prison and the superintendent of each camp and farm and all officers and employees thereof and all other public officials shall at all times co-operate with the Governor and Parole Commissioner and shall furnish to them all information that may be requested from time to time that will assist them in performing their functions, and all such wardens and other employees shall at all times give to the Governor and Parole Commissioner and his staff free access to all prisoners. (1935, c. 414, s. 14.)

§ **148-65. Time of appointments by Governor; Board meetings.**—The appointments provided herein to be made by the Governor shall be made by the Governor as soon as he conveniently can after this article takes effect. The Board shall meet at the call of the Governor at times and places designated by him. (1935, c. 414, s. 21.)

ARTICLE 4A.

Out-of-State Parolee Supervision.

§ **148-65.1. Governor to execute compact; form of compact.**—The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act granting the consent of Congress to any two or more states to enter into agreements or compacts for co-operative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto. (1951, c. 1137, s. 1.)

§ **148-65.2. Title of article.**—This article may be cited as the "Uniform Act for Out-of-State Parolee Supervision." (1951, c. 1137, s. 2.)

ARTICLE 5.

Farming Out Convicts.

§ **148-66. Cities and towns and Board of Agriculture may contract for prison labor.**—The corporate authorities of any city or town may contract in writing with the State Highway and Public Works Commission for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Board of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Highway and Public Works Commission for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127,

s. 1; Code, s. 3449; Rev., s. 5410; C. S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1.)

Editor's Note. — The 1943 amendment added the second paragraph. For comment on the amendment, see 21 N. C. Law Rev. 333.

Cited in Watson v. Durham, 207 N. C. 624, 178 S. E. 218 (1935).

§ **148-67. Hiring to cities and towns and Board of Agriculture.** — The State Highway and Public Works Commission shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Commission; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Commission.

Upon application to it, it shall be the duty of the State Highway and Public Works Commission, in its discretion, to hire to the Board of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Highway and Public Works Commission. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C. S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2.)

Editor's Note. — The 1943 amendment added the second paragraph.

§ **148-68. Payment of contract price; interest; enforcement of contracts.**—The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the State for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the State money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six per cent per annum; and an action to recover the same may be instituted by the Attorney General in the name of the State in the courts of Wake County. (1881, c. 127, s. 3; Code, s. 3451; Rev., s. 5412; C. S., s. 7760; 1925, c. 163; 1931, c. 145, s. 35.)

§ **148-69. Agents; levy of taxes; payment of costs and expenses.** —The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (1881, c. 127, s. 4; Code, s. 3452; Rev., s. 5413; C. S., s. 7761; 1925, c. 163; 1931, c. 145, s. 35.)

§ **148-70. Management and care of convicts; prison industries; disposition of products of convict labor.**—The State Highway and Public Works Commission in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the Commission shall provide for the guarding and working of such convicts under its sole supervision and control. The Commission may make such contracts for the hire of the convicts confined in the State prison as may in its discretion be proper and will promote the purpose and duty to make the State prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in section eleven, article eleven of the Constitution. The Commission may use the labor of convicts confined in the State prison in such work on farms, in manufacturing, either within or without the State prison, as the Commission may find proper and profitable to be carried on by the State prison; and the Commission may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the State prison, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State; and the Commission may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18.)

Article 5A.

Prison Labor for Farm Work.

§ **148-70.1. Commission authorized to furnish prison labor to farmers.**—The State Highway and Public Works Commission is hereby authorized, subject to the conditions hereinafter contained, to furnish prison labor to assist farmers in the production and harvesting of food and feed crops. (1943, c. 452, s. 1.)

Editor's Note. — For comment on this and the six following sections, see 21 N. C. Law Rev. 333.

§ **148-70.2. When Governor declares extraordinary emergency.**—Whenever the Governor shall find and declare that there exists an extraordinary emergency in any particular section due to the lack of available labor in the work of producing and harvesting food and feed crops, and the chairman of the State Highway and Public Works Commission shall find that it is possible to release certain prisoners from highway work without serious prejudice to the maintenance of the public roads, the Commission may make such prisoners available for assistance to farmers in such production and harvesting work. (1943, c. 452, s. 2.)

§ **148-70.3. Prerequisites to work on particular farm; county agent as intermediary.**—Before any prisoners are furnished for such farm work, the county farm agent in said county shall ascertain and determine that such work is needed upon the particular farm and shall negotiate with the designated representative of the Prison Department of the State Highway and Public Works Commission as to the number of prisoners that may be available for such work, and shall act as an intermediary between the owner of the farm and such designated representative of the Prison Department of the Commission as to the number of prisoners to be employed, the estimated time for which they are to be employed, and the place and character of their work. No prisoners shall be assigned to work on any farm until the owner thereof has deposited with the county farm agent a sum of money sufficient to cover the estimated cost of such work; and when the work is completed, the county farm agent shall remit to the State Highway and Public Works Commission pay for such work upon the basis agreed upon. (1943, c. 452, s. 3.)

§ **148-70.4. Commission to establish price for labor.**—Before any work is done under the provisions of this article, the State Highway and Public Works Commission shall establish a price for such prison labor, which price shall be sufficient to include the custodial care of such prisoners, including pay for guards and foremen, transportation, and other expenses incident to the said work. (1943, c. 452, s. 4.)

§ **148-70.5. Authority of Commission to suspend farm work.**—Notwithstanding any agreement made for the furnishing of prison labor under the terms of this article, if there shall arise any emergency in the highway work which renders it impracticable to furnish such prison labor without serious prejudice to the maintenance of public roads, then and in that event the Commission shall have a right to suspend such farm work and recall the prisoners to highway work. (1943, c. 452, s. 5.)

§ 148-70.6. Prisoners to remain under control of Prison Department. — Any prisoners furnished for farm work under the provisions of this article shall at all times be under the control of the duly appointed agents of the Prison Department of the State Highway and Public Works Commission and shall be fed and otherwise cared for by the said Prison Department to the same extent as if they were engaged in highway work. (1943, c. 452, s. 6.)

§ 148-70.7. Duration of article.—This article shall be in force and effect during the present war and for six months thereafter, and no longer. (1943, c. 452, s. 7.)

ARTICLE 6.

Reformatory.

§§ 148-71 to 148-73: Repealed by Session Laws 1947, c. 262, s. 3.

ARTICLE 7.

Bureau of Identification.

§ 148-74. Bureau established.—A State bureau to be entitled the Bureau of Identification is hereby established. (1925, c. 228, s. 1.)

Cross Reference. — As to subsequent statute affecting this article, see § 114-18.

§ 148-75. Director.—A deputy warden of the State prison is hereby designated as director of said Bureau, who shall be a fingerprint expert and familiar with other means of identifying criminals and who shall have complete control of said Bureau within the limits hereinafter prescribed, said director to devote a sufficient portion of his time to the purposes of said Bureau and shall maintain the principal offices of the same at the State prison, and the said Bureau with full equipment as herein provided for shall be established and maintained by the board of trustees of the penitentiary out of the general appropriation to the State prison. (1925, c. 228, s. 2.)

§ 148-76. Duty of Bureau.—It shall be the duty of the said Bureau of Identification to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or co-operative action on the part of the criminals, reporting such conditions, and to co-operate with all officials in detecting and preventing. (1925, c. 228, s. 3.)

§ 148-77. Henry system maintained.—The director is required to use and maintain the Henry system. (1925, c. 228, s. 4.)

§ 148-78. Annual report.—The director of the Bureau is directed to submit in his annual report as a part of the report of the State prison, a full account of all funds received and expenses to the Governor, and an estimate of what is necessary to carry out the provisions of this article. (1925, c. 228, s. 5.)

§ 148-79. Fingerprints taken; photographs.—Every chief of police and sheriff in the State of North Carolina is hereby required to take or cause to be taken on forms furnished by this Bureau the fingerprints of every person convicted of a felony, and to forward the same immediately by mail to the said Bureau of Identification. That the said officers are hereby required to take the fingerprints of any other person when arrested for a crime when the same is deemed advisable by any chief of police or sheriff, and forward the same for record to the said Bureau. No officer, however, shall take the photograph of a person arrested and charged or convicted of a misdemeanor unless such person is a fugitive from justice, or unless such person is, at the time of arrest, in the possession of goods or property reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the Federal Bureau of Investigation, or the State Bureau of Investigation, or some other law enforcing officer or agency. (1925, c. 228, s. 6; 1945, c. 967.)

Editor's Note. — The 1945 amendment added the last sentence.

§ **148-80. Seal of Bureau; certification of records.**—The director shall provide a seal to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of said Bureau of Identification and when so certified under seal such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7.)

§ **148-81. Report of disposition of persons fingerprinted.** — Every chief of police and sheriff shall advise said Bureau of final disposition of all persons fingerprinted. (1925, c. 228, s. 8.)

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ **148-82. Provision for compensation.**—Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be pardoned by the Governor upon the grounds that the crime with which he was charged either was not committed at all or was not committed by him, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by him through his erroneous conviction and imprisonment. (1947, c. 465, s. 1.)

Editor's Note. — For a brief comment on this article, see 25 N. C. Law Rev. 403.

§ **148-83. Form, requisites and contents of petition; nature of hearing.**—Such petition shall be addressed to the Commissioner of Pardons, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Commissioner of Pardons shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least fifteen days before the time fixed therefor. (1947, c. 465, s. 2.)

§ **148-84. Evidence; action by Commissioner of Pardons; payment and amount of compensation.** — At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Commissioner of Pardons finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Commissioner of Pardons shall report the facts, together with his conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the contingency and emergency fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars

($500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars ($5,000.00). (1947, c. 465, s. 3.)

ARTICLE 9.

Prison Advisory Council.

§ **148-85. Creation of Council; purpose.** — There is hereby created a Prison Advisory Council (hereinafter called "the Council") for the purpose of promoting in the State prison system practices consistent with the best modern concepts and experience, directed toward the rehabilitation of prisoners. (1949, c. 359.)

§ **148-86. Membership; chairman.**—The Council shall be composed of the following members: five persons to be appointed by the Governor of North Carolina by reason of their interest in and knowledge of prison administration and the rehabilitation and the education of prisoners. One member shall be designated by the Governor to be the chairman of the Council. Initial appointments shall be for the following terms: one member for six years; two members for four years; and two members for two years. All appointments thereafter made shall be for terms of six years. In addition to the five regular members, the Attorney General and the Commissioner of Public Welfare shall be ex officio members of the said Council.

Each member of the Council, except the ex officio members, shall receive as compensation the amounts set forth in section 4 of the Budget Appropriation Bill for the Biennium 1949-51, this compensation to be paid out of the contingency and emergency fund. (1949, c. 359.)

§ **148-87. Meetings.**—The Council shall meet at least semi-annually and at any other time at the call of the chairman. After each meeting, a written report shall be sent to the chairman of the State Highway and Public Works Commission. (1949, c. 359.)

§ **148-88. Function.** — It is the duty of the Council to advise with the prison director on all matters pertaining to prison administration, the employment, training, custody, and discipline of prisoners and all other phases of prison management. The Council shall study thoroughly the State prison system and shall from time to time make recommendations for the improvement thereof to the State Highway and Public Works Commission. (1949, c. 359.)

Chapter 149.

State Song.

Sec.
149-1. "The Old North State."

§ **149-1. "The Old North State."**—The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! the good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region as on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

Chapter 150.

Uniform Revocation of Licenses.

Sec.
150-1. Procedure for hearings on suspension or revocation of licenses by certain State boards and commissions.
150-2. Venue of hearings.
150-3. Authority of boards to issue subpoenas, etc.
150-4. Notice of appeal.
150-5. Right of appeal to Supreme Court.
150-6. Power of board to restore licenses.
150-7. Additional powers of boards.
150-8. Construction of chapter.

§ **150-1. Procedure for hearings on suspension or revocation of licenses by certain State boards and commissions.** — No license issued by the State Board of Examiners of Electrical Contractors, State Licensing Board for Contractors, State Board of Accountancy, State Board of Embalmers, Board of Chiropody Examiners, North Carolina Board of Veterinary Medical Examiners, Board of Barber Examiners, State Board of Registration for Engineers and Land Surveyors, Cosmetologists Board, Tile Contractors Board, Plumbing and Heating Board, Board of Boiler Rules, North Carolina Board of Nurse Examiners, and Board of Photographic Examiners shall be revoked or suspended except according to a procedure which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references and shall include (1) a notice in writing to the person whose license is involved, stating the charge or charges against the said licensee and fixing a date and place for a hearing which shall not be less than thirty days from the issuance of said notice upon the person to whom it is issued, and shall be served upon the person named therein by an officer authorized by law to serve process, or by mailing by registered mail to the person named therein at the address given in the license or the last known address; (2) a hearing before the board, or a member thereof specifically designated by the board for the purpose of hearing the matters involved, at which hearing the accused shall have the right to be present to enter his defense, if any, and be represented by counsel and produce evidence by witnesses or records; (3) notice of action by the board which shall be a written report containing findings of fact and conclusions of law thereon; (4) appeal from the action of the board to the superior court of the county in which the hearing was held or to the Superior Court of Wake County upon filing of an appeal bond in the sum of fifty dollars which shall act as a supersedeas. (1939, c. 218, s. 1; 1947, c. 86, s. 1.)

Cross Reference. — As to compulsory reference generally see § 1-189 et seq.

Editor's Note. — For comment on this enactment, see 17 N. C. Law Rev. 331; 19 N. C. Law Rev. 438.

The 1947 amendment inserted "North Carolina Board of Nurse Examiners" in the list of boards to which this section is applicable. Section 2 of the amendatory act provided that this chapter shall be applicable to all hearings on suspension or revocation of licenses by the North Carolina Board of Nurse Examiners.

§ **150-2. Venue of hearings.**—All hearings shall be in the county of the residence of the person whose license is involved; provided that after notice such person and the board may agree that the hearing may be held in some other county. (1939, c. 218, s. 2.)

§ **150-3. Authority of boards to issue subpoenas, etc.**—For all hearings the board shall have authority to issue subpoenas to witnesses to appear in person and to produce books, records, papers and other evidence as may be necessary or requested. (1939, c. 218, s. 3.)

§ **150-4. Notice of appeal.**—When appeal is taken from the decision of the board, the person whose license is involved shall give notice in writing of appeal and shall state therein the exceptions to the decision of the board. Within thirty days the board shall cause to be filed in the office of the clerk of the court in the proper county a complete transcript, including the notice of charges, evidence taken at the hearing, the order or decision of the board and the exceptions filed thereto. The person whose license is involved shall upon his appeal have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the trial committee or counsel.

If after the action of the board new evidence shall be discovered by the person whose license is involved or by the board, motion may be made that the matter be remanded to the board for the taking of further evidence, and order thereon may be entered in the discretion of the judge of the superior court in which the matter is pending. (1939, c. 218, s. 4.)

§ **150-5. Right of appeal to Supreme Court.** — From any decision of the superior court either the board or the person whose license is involved shall have the right of appeal to the Supreme Court. Whenever any notice of appeal is given and the bond required herein is filed, the order of the board shall be superseded until the appeal is finally determined, whereupon, unless reversed, modified or changed, the order shall become binding. (1939, c. 218, s. 5.)

§ **150-6. Power of board to restore licenses.**—Whenever any license has been suspended or revoked by any of the boards named in § 150-1, the board shall have the right to restore the license upon satisfactory evidence that the person whose license has been suspended or revoked intends to comply with the law and the rules and regulations of the board. (1939, c. 218, s. 6.)

§ **150-7. Additional powers of boards.**—The board is empowered and authorized to sue or be sued in its own name and to apply for such writs as may be desired to prevent the violations of the provisions of the act establishing said board and the amendments thereto. (1939, c. 218, s. 7.)

§ **150-8. Construction of chapter.**—Nothing in this chapter shall be construed to remove any additional procedural requirement which may be provided in the laws creating any of the boards named in § 150-1, nor as preventing any of such boards from providing additional rules and regulations concerning the procedure for the suspension or revocation of license. (1939, c. 218, s. 8.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

January 31, 1952

I, Harry McMullan, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

HARRY MCMULLAN,
Attorney General of North Carolina

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